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असाधारण  
EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)  
PART II—Section 3—Sub-Section (ii)

प्राधिकार से प्रकाशित  
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नई दिल्ली, बृहस्पतिवार, जून 29, 1995/आषाढ़ 8, 1917

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NEW DELHI, THURSDAY, JUNE 29, 1995/ASADHA 8, 1917

गृह मंत्रालय

अधिसूचना

नई दिल्ली, 29 जून, 1995

का.आ. 588(अ).—केन्द्रीय सरकार ने विधि-विरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 (1967 का 37) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए विश्व हिन्दू परिषद (जिसे इसमें इसके पश्चात वि.हि.प. कहा गया है) को भारत सरकार के गृह मंत्रालय की अधिसूचना संख्या का.आ. 41(अ) दिनांक 14 जनवरी, 1995 द्वारा एक विधि-विरुद्ध संगम घोषित किया गया था;

और केन्द्रीय सरकार ने उक्त अधिनियम की धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत सरकार के गृह मंत्रालय की अधिसूचना संख्या का.आ. 71(अ) दिनांक 1 फरवरी, 1995 के द्वारा विधि-विरुद्ध क्रियाकलाप (निवारण) अधिकरण का गठन किया था, जिसमें

दिल्ली उच्च न्यायालय के न्यायाधीश न्यायमूर्ति श्री के. राममूर्ति थे;

और केन्द्रीय सरकार ने उक्त अधिनियम की धारा 4 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त अधिसूचना को 9 फरवरी, 1995 को इस बात के न्यायनिर्णयन के लिए उक्त अधिकरण को निर्दिष्ट किया था कि उक्त संगम को विधि-विरुद्ध घोषित करने के लिए पर्याप्त कारण था अथवा नहीं;

और उक्त अधिकरण ने उक्त अधिनियम की धारा 4 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए अधिसूचना सं. का.आ. 41(अ) दिनांक 14 जनवरी, 1995 में की गई घोषणा को रद्द करते हुए 20 जून, 1995 को एक आदेश किया था;

अतः अब केन्द्रीय सरकार, उक्त अधिनियम की धारा 4 की उपधारा (4) के अनुसरण में उक्त आदेश प्रकाशित करती है।

[सं. 12034/18/95-आई एस (डी-5) (टी.)]

रामफल, उप सचिव

## MINISTRY OF HOME AFFAIRS

## NOTIFICATION

New Delhi, the 29th June, 1995

S.O. 588(E).—Whereas the Central Government in exercise of the powers conferred by sub-section (1) of section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), declared Vishwa Hindu Parishad (hereinafter referred to as VHP) to be a unlawful association vide notification of Government of India in the Ministry of Home Affairs No. S.O. 41(E), dated the 14th January, 1995.

And whereas the Central Government in exercise of the powers conferred by sub-section (1) of section 5 of the said Act constituted vide notification of the Government of India in the Ministry of Home Affairs No. S.O. 71(E) dated the 1st February, 1995 the Unlawful Activities (Prevention), Tribunal, consisting of Justice Shri K. Ramamoorthy, Judge of the Delhi High Court;

And whereas the Central Government in exercise of the powers conferred by sub-section (1) of section 4 of the said Act referred the said notification to the said Tribunal on the 9th February, 1995 for the purpose of adjudicating whether or not there was sufficient cause for declaring the said association as unlawful;

And whereas the said Tribunal, in exercise of the powers conferred by sub-section (3) of section 4 of the said Act, made an order on the 20th June, 1995, cancelling the declaration made in the Notification No. S.O. 41(E) dated the 14th January, 1995;

Now, therefore, in pursuance of sub-section (4) of section 4 of the said Act, the Central Government hereby publishes the said order, namely :—

BEFORE THE UNLAWFUL ACTIVITIES  
(PREVENTION) TRIBUNAL

(Re. : V.H.P. Notification S.O. 41-E)

20-6-95

Present :

Mr. P.P. Malhotra, Sr. Advocate with Mr. MadanLokur for Government.

Mr. L. R. Gupta Sr. Advocate with Mr. R. P. Bansal and Mr. D. R. Mahajan, Mr. N. N. Gupta, Mr. Manoj Kapila and Ms. Kamlesh Mahajan Advocates for the VHP.

## ORDER

K. RAMAMOORTHY, J.

The Notification dated 14th of January 1995, published in the official Gazette of India. It was issued the same day by the Government of India, the Ministry of Home Affairs as under :

“MINISTRY OF HOME AFFAIRS”  
NOTIFICATION

New Delhi, the 14th January, 1995

S.O. 41(E).—Whereas the Vishwa Hindu Parishad, hereinafter referred to as VHP, was declared as an unlawful association under the Unlawful Activities (Prevention) Act, 1967 (37 of 1967) by the notification of the Government of India in the Ministry of Home Affairs No. S.O. 900(E) dated 10-12-1992 on grounds stated therein ;

9. And whereas the statements, utterances and declarations made by the aforesaid persons who are members of and part of VHP or who have spoken on behalf of VHP at meetings organised by or under the auspices of VHP promote or attempt to promote, on grounds of religion, disharmony or feelings of enmity, hatred or ill-will between different religious communities or which are prejudicial to the maintenance of harmony between different religious communities and which are likely to disturb the public tranquility;

10. And whereas for all or any of the grounds set out in the preceding paragraphs, the Central Government is of opinion that VHP is an unlawful association.

11. Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), the Central Government hereby declares the Vishwa Hindu Parishad (VHP) to be an unlawful association;

12. And whereas the prominent members of VHP had decided to convene a meeting of the Marg Darshak Mandal, as Advisory Council established under Rules and Regulations of the VHP, to be held at Allahabad in the last week of January 1995 to chalk out a programme of action for getting the possession of the disputed land in Ayodhya which will have the effect of causing serious communal tensions and thereby is likely to disturb public peace and tranquility ;

13. And whereas it is evident that VHP intends to extend the sphere of activity in the immediate future so as to attain the professed objectives relating to shrines in Varanasi and Mathura which would also cause serious communal tensions and thereby disturb or tend to disturb public peace and tranquility ;

14. And whereas due to such statements, utterances, declarations and activities of the VHP as stated in the preceding paragraphs, there is an immediate and real threat to communal harmony and to the safety of the structures at Varanasi and Mathura;

15. And whereas the Central Government is of the opinion that in view of what has been stated in paragraphs 12, 13 and 14 circumstances exist which render it necessary to declare VHP as an unlawful association with immediate effect;

2. The declaration made by the Government is before me for consideration under Section 4 of the Unlawful Activities (Prevention) Act, 1967.

3. Before adverting to the points in controversy, the situation provokes and I give a brief prologue.

4. I ask myself the question what is the need for notifications one after the another? If that is the intention of the Government, there will be no end to this process. Who wants disharmony amongst the citizens? As far as my little experience goes all the citizens of this country are law abiding and they try to do their best to contribute their mite for the progress of the country and but for the hard work and dedication of the people it would not have been possible for us to have the courage to enter the international arena for enterprise, business and compete with other developed nations of the world in Science and Technology. It is not the policies framed by the Government that do work wonders coming out as if, from a magic wand, but the conviction and the faith of the people in the body polity and the will and the determination to govern themselves with courage and fortitude. The centrifugal force is the unity in diversity and the feeling of oneness and the abiding faith in the innate goodness of men.

5. It is a matter of human experience that all successful persons in all spheres of life, endeavour to understand the importance of time and use it wisely. We have to save time and energy to save our country and resist the force trying to divide from within. Everybody wants peace and tranquility. Members of all communities live as belonging to one family on the premise that they are the sons and daughters of Mother India. Members from all communities are holding high positions in Government and in private shaping the destinies of people and in all walks of life. No member of any community wants any clash with any member of other communities. People who realise their duties and responsibilities make efforts to maintain peace, goodwill and harmony in society.

6. But the question is who is behind the mischief creating difference of opinion? The answer is not far to seek. The insatiable desire to be in power makes persons to lose balance. That is the genesis of the prevailing conditions in the country. Before Independence, people were prepared to sacrifice anything for the sake of the country to get for us the primordial freedom. People did not have the taste of power.

7. The attitude had undertaken a sea change the moment we attained independence. Everybody wants to be in power. Nobody is willing to serve. Sense of sacrifice is gone. At this juncture, I would like to recall the immortal words of Lok Manya Tilak. It is a matter of history that he was prosecuted for sedition. The Judge who had tried the case had found him guilty. For imposing the sentence, the Judge asked Mr. Tilak if he had anything to say. Reply came from Mr. Tilak "I still maintain I am innocent. But it is the Will of the Providence that the cause I represent should prosper more by my suffering than by my remaining free".

8. He did not fight for a particular community. All leaders in the yesteryears, whatever community to which they belonged, though in terms of only the country as a whole.

9. Now, there is race for power everywhere. And those who are in power are oblivious to the welfare of the teeming millions in this country, and the result is the progress of the country is impeded. And when we are nearing the 21st century and when the task ahead of us is stupendous and unless we stand united it is very difficult to maintain the democratic system in our country. What is Supreme Court had observed in *Ajay Hasia etc. vs. Khalid Mujib Sehravardi and others etc.* AIR 1981 S.C. 487 has to be taken seriously and try to follow the path of morality and rectitude. The Supreme Court said 14 years ago "Now there can be no doubt that, having regard to the drawbacks and deficiencies involving in the oral interview and the conditions prevailing in the country, particularly when there is deterioration in moral values and corruption and nepotism are very much on the increase, allocation of a high percentage of marks for the oral interview as compared to the marks allocated for the written test, cannot be accepted by the Court as free from the vice of arbitrariness."

10. Therefore, the people of this country have to bring about the change in men in the corridors of powers and their outlook and instil in them and sense of sacrifice and well being of all. People have to remember the famous words of Abraham Lincoln that the Government is, of the people, by the people and for the people.

11. In the arena of religion, there is no difficulty. People are aware of the basic tenets of all religions and they try to maintain peace and harmony. A few interested individuals to further their own ends attempt to divide, forgetting that the people of this country are not as vulnerable as they think. No force on earth can disturb the calmness and serenity of our motherland. India is a sacred place "as declared by Shri Sathya Sai Baba of Puttapathi, Andhra Pradesh". Baba has in unmistakable term advised people to always keep in mind the true meaning of life. He has said :

"There is only one God;

He is omni present.

There is only one caste;

the caste of humanity.

There is only one religion;

the religion of love.

There is only one language;

the language of the heart.

12. Therefore, if we appreciate the advice of Baba there is no room for any kind of misunderstanding or difference of opinion. The younger generation in all communities is fully alive to its task and I am confident there is no room for any kind of mishap anywhere. I dare say that the advance in science and technology, which is bringing all the peoples of the world under one roof, as it were, would make us realise what Shri Sathya Sai Baba has said.

13. As humble citizen of this country, having regard to the attitude of the people, the future of this country is bright and balmy and after a long and arduous journey we are at the end of the tunnel, and the light visible, bright and dazzling and there is no room for dismay or despair and the millennium, our national goal is not far off and there is no need for desperation on the premise that the position in our country is inevitable. In some quarters trouble would seem to emanate owing to the lack of proper understanding of what is God. The beautiful elucidation by Shri Sathya Sai Baba about God would easily make us comprehend the fundamental principles about realising the existence of God.

"The Lord can be addressed by any name that tastes sweet to your tongue or pictured in any form that appeals to your sense of wonder and awe. You can sing of Him as Murga, Ganpati, Sharda, Jesis, Maitreya, Sakti or we can call on Allah or the Formless or the Master of all Forms. It makes no difference at all. He is the beginning, the middle and the end, the basis, the substance and the source. God is inscrutable. He cannot be realised in the outer objective world; he is the very heart of every being. Gem stones have to be sought deep underground; they do not float in the mid air. seek God in the depth of yourselves, not in tantalising kaleidoseopic nature. The body is granted to you for this high purpose, but you are now missing it, like the persons who cooked his daily food in the games studded gold vase that came into his hands as an heirloom. Man extols God as omniscient, but he ignores His presence in himself. Of course, many venture to describe the attributes of God and proclaim him to be such and such; but these are let their own guesses and the reflections of their own predilections and preferences.

Who can affirm that God is this or thus? Who can affirm that God is not of this form or that this attribute? Each one can acquire from the vast expand of the ocean only as much as can be contained in the vessel he carries to its shore. From that quantity he can grasp but little of that immensity.

Each religion defines God between the limits it demarcates and then claims to have grasped him. Like the seven blind men who spoke of the elephant as a pillar, a fan, a rope, or a wall, because they contacted to a part but could not comprehend the entire animal. So to religions speak of a part and assert that was vision as full and total.

Each religion forgets God is all forms and all names, all attributes and all assertions. The religions of humanity is sum and substance of all these partial faiths; for there is only one religion and that is religion of love."

Baba would further tell us as to how we should live :

"It is enough love is cultivated—the love that knows no definition between oneself and another—because of all are but limbs of one corpus of God Almighty. Through love alone can the embodiment of love be gained. Here, no scholarship is needed; in fact, scholarship is an impediment, for it caters to egoism and it breeds doubts and desires for disputation and the laurels of victory over others preening themselves as learned."

14. We all know that we are at the crossroads, and unless determined efforts are made we cannot maintain the democratic system and we cannot achieve self sufficiency and we can not compete in the global markets to improve our economy. In the context of political scenerio in the country, we have to take the warning given by late R. K. Shanmugham Chettiar, who was one of the Cabinet Ministers in the Central Government. He said "While we have secured freedom from foreign yoke mainly through the operation of world events and partly through a unique act of self abnegation on behalf of the erstwhile rulers of the country, we have yet to consolidate into one unified whole the many discordant elements in our national life. The way ill fortune has dogged our heels makes one doubt whether our people had made a tryst with the disaster rather than with destiny." Unless people are alert and dynamic, the progress of the country will be hampered.

15. So far as the field of education is concerned, we have not been able to educate all the people but a high percentage of the section of the people, who are well educated and apt to abdicate their sense of duty to the nation for seeking material comforts and position in life. In this connection, what Shri Sathya Sai Baba has said must be followed by the educated people. He said "education should not encourage people to chase comfort and luxury. Students must realise that "Bhoga" (enjoyment) leads to "roga" (disease). They must learn from a very early age the art of 'Tyaga' (sacrifice). Every Indian should know that it is only through sacrifice that one may achieve "Amrutatya" (eternal bliss). Education should instil in young minds the abhorance of sin the love of God. Man's real strength consists in the moral values practised by him not in the book learning. Ravana was an adept of the 64 subjects of knowledge, but Adharma (unrighteousness) led to his downfall.

16. People are and alive to the fact that there is no difference between man and man in the mist of the divine, but all the distinctions as high and low are due to His Will; in this world of diversity and multiplicity man should develop his mind to see oneness in all human beings and this can be achieved only by love of the heart and compassion to others. That is why we have been able to carry on as one family, all these centuries through thick and thin in spite of many a vicissitude.

17. Wisdom of the people of India can never be doubted. People who aspire to occupy seats of power should go to them, convince them about their genuine desire to serve the country. The rural masses of India can no longer be taken for granted and they are no longer credulous to assume whatever that is stated by politicians. They realise the power of their votes and they will not succumb to any subterfuges and artifices.

18. The attitude of the people as a whole is to maintain peace, but an infinitesimal percentage of the cross section of our society would try to indulge in some activities causing ripples in the otherwise still waters for their own selfish ends.

19. It is only to curb the activities of these small member and to independently deal with such microscopic number, Parliament wanted to clothe the Government with sufficient power and enacted the Unlawful Activities (Prevention) Act, 1967 laying down the parameters for the exercise of power.

20. Time was when rex was lex. We now seek to say lex is rex. Government is neither lex or rex. In a democratic country, it requires strong moral fibre on the part of the persons in power to resist the pressure seeping from the electoral arena and they should try to withstand the pressure and act in the interest of the country. The exercise of power by the Government under the Act should be within the four corners of the Act.

21. The broad question that falls to be decided is whether the exercise of that power by the Central Government in the instant case is in accordance with the provisions of the Act.

22. For a proper appreciation of the scope and ambit of the Act, it is necessary to have a look at the provisions of the Act. There are 21 Sections in the Act. The preamble of the Act says "An Act to provide for the more effective prevention of certain unlawful activities of individuals and associations and for matters connected therewith." Section 1 provides that the Act extends the whole of India. Section 2 gives the definitions of certain words. It is common ground that what is relevant is the definition of unlawful association in section 2(g). That sub section reads as follows :—

(g) "unlawful association" means any association—

- (i) which has for its object any unlawful activity, or which encourages or aids persons to undertake any unlawful activity, or of which the members undertake such activity ; or
- (ii) which has for its object any activity which is punishable under Section 153A or Section 153B of the Indian Penal Code, 1860 (45 of 1860), or which encourages or aids persons to undertake any such activity, or of which the members undertake any such activity."

In this section what is to be considered is whether the respondent society comes within the mischief of (g) (ii). On a reading of this definition, the ingredients appears to be that the activities of the society concerned should be punishable under section 153-A or Section 153-B of the Indian Penal Code 1860.

23. Section 2A, the marginal note is constructions of references to laws not in force in Jammu and Kashmir. Section 3 empowers the Government to declare an Association as unlawful. Section 3(2) reads as follows :—

"Every such notification shall specify the grounds on which it is issued and such other particulars as the Central Government may consider necessary."

A reading of the section shows that the Government should specify the grounds in the notification. In proviso to sub-section 2 the Government is given the right not to disclose any fact which it considers to be against the public interest to disclose.

24. Section 4 deals with reference to the Tribunal and the same is as follows :—

"Reference to Tribunal.—(1) Where any association has been declared unlawful by a notification issued under Sub-section (1) of Section 3, the Central Government shall, within thirty days from the date of the publication of the notification under the said Sub-section, refer the notification to the Tribunal for the purpose of adjudicating whether or not there is sufficient cause for declaring the association unlawful.

(2) On receipt of a reference under Sub-section (1), the Tribunal shall call upon the association affected by notice in writing to show cause, within thirty days from the date of the service of such notice, why the association should not be declared unlawful.

(3) After considering the cause, if any, shown by the association or the office bearers or members thereof, the Tribunal shall hold an inquiry in the manner specified in Section 9 and after calling for such further information as it may consider necessary from the Central Government or from any office-bearer or member of the association, it shall decide whether or not there is sufficient cause for declaring the association to be unlawful and make, as expeditiously as possible and in any case within a period of six months from the date of the issue of the notification under Sub-section (1) of Section 3, such order as it may deem fit either confirming the declaration made in the notification or cancelling the same.

(4) The order of the Tribunal made under Sub-section (3) shall be published in the Official Gazette."

As per this provision, within thirty days from the date of the publication of the notification the Central

Government is to make a reference to the Tribunal. The Tribunal is to give show cause notice to the concerned association. The Tribunal shall hold an inquiry to find out whether or not there is sufficient cause for declaring the association to be unlawful. The Tribunal after holding inquiry may confirm the declaration or cancel the same. What is to be noticed is in sub section 1 of Section 4 the word adjudicating is used. In sub section 3 of Section 4 the Tribunal is empowered to hold an inquiry in the manner provided in Section 8. Section 9 reads as follows :—

“9. Procedure to be followed in the disposal of the applications under this Act—Subject to any rules that may be made under this Act, the procedure to be followed by the Tribunal in holding any inquiry under Sub-section (3) of Section 4 or by a Court of the District Judge in disposing of any application under Sub-section (4) of Section 7 or Sub-section (8) of Section (8) shall, so far as may be, be the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908), for the investigation of claims and the decision of the Tribunal or the Court of the District Judge, as the case may be, shall be final.”

Thereafter, the Tribunal is to give a decision as to the sufficient cause. In the context of the provisions of the Act, having regard to the object and the rights of the citizens the power of the Tribunal is to see whether the materials produced by the Central Government would justify the declaration. The words ‘sufficient cause’ should not be considered in the light of the words in other statutes, say for instance, a Civil Procedure Code, Limitation Act, Companies Act and so many other enactments.

25. Section 5 speaks of the constitution of the Tribunal. Sub-section (6) and (7) are relevant and they read as follows :—

(6) The Tribunal shall, for the purpose of making an inquiry under this Act, have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely :—

- (a) the summoning and enforcing, the attendance of any witness and examining him on oath;
- (b) the discovery and production of any document or other material object producible as evidence;
- (c) the reception of evidence on affidavits;
- (d) the requisitioning of any public record from any court or office;
- (e) the issuing of any commission for the examination of witnesses.

(7) Any proceeding before the Tribunal shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code, (45 of 1860) & the Tribunal shall be deemed to be a Civil Court

for the purposes of Section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898 (5 of 1898).

26. It is well settled when a Court of law is asked to function as a Tribunal, the Court can exercise all its powers. In other words, it is not a forum with limited powers.

27. Section 6 of the Act speaks of power of operation and cancellation of notification. The same reads as follows :—

“6. Period of Operation and Cancellation of Notification.—(1) Subject to the provisions of sub-section (2), a notification issued under section 3 shall, if the declaration made therein is confirmed by the Tribunal by an order made under Section 4, remain in force for a period of two years from the date on which the notification becomes effective.

(2) Notwithstanding anything contained in Sub-section (1), the Central Government may, either on its own motion or on the application of any person aggrieved, at any time, cancel the notification issued under Sec. 3, whether or not the declaration made therein has been confirmed by the Tribunal.”

28. Section 7 of the Act which speaks of complete stoppage of activities of the association concerned and the same is as follows :—

“7. Power to prohibit the use of funds of an Unlawful Association.—(1) Where an association has been declared unlawful by a notification issued under Section 3, which has become effective under Sub-section (3) of that section and the Central Government is satisfied, after such inquiry as it may think fit, that any person has custody of any moneys, securities or credits which are being used or are intended to be used for the purpose of the unlawful association, the Central Government may, by order in writing, prohibit such person from paying, delivering, transferring or otherwise dealing in any manner whatsoever with such money securities or credits or with any other moneys, securities or credits which may come into his custody after the making of the order, save in accordance with the written orders of the Central Government and a copy of such order shall be served upon the person so prohibited in the manner specified in Sub-section (3).

(2) The Central Government may endorse a copy of the prohibitory order made under Sub-section (1) for investigation to any Gazetted officer of the Government it may select, and such copy shall be a warrant whereunder such officer may enter in or upon any premises of the person to whom the order is directed, examine the books of such person, search for moneys, securities or credits, and make inquiries from such person or any officer, agent or servant of

such person, touching the origin of any dealings in any moneys, securities or credits which the investigating officer may suspect are being used or are intended to be used for the purpose of the unlawful association.

(3) A copy of an order made under this Section shall be served in the manner provided in the Code of Criminal Procedure, 1898 (5 of 1898) for the service of a summons, or, where the person to be served is a corporation, company, bank or other association, it shall be served on any secretary, director or other officer or person concerned with the management thereof, or by leaving it or sending it by post addressed to the corporation, company, bank or other association at its registered office, or where there is no registered office, at the place where it carries on business.

(4) Any person aggrieved by a prohibitory order made under Sub-section (1) may, within fifteen days from the service of such order, make an application to the Court of the District Judge within the local limits of whose jurisdiction such person voluntarily resides or carries on business or personally works for gain, to establish that the moneys, securities or credits in respect of which the prohibitory order has been made are not being used or are not intended to be used for the purpose of the unlawful association and the Court of District Judge shall decide the question.

(5) Except so far as is necessary for the purpose of any proceedings under this Section, no information obtained in the course of any investigation made under Sub-section (2) shall be divulged by any Gazetted Officer of the Government, without the consent of the Central Government.

(6) In this section, "security" includes a document whereby any person acknowledges that he is under a legal liability to pay money, or whereunder any person obtains a legal right to the payment of money."

29. Section 8 of the Act empowers the Government to notify places used for purposes of unlawful purposes. Sweeping powers are given to the Government to deal with the association which has been declared unlawful. Section 10 speaks of penalty for being members of an unlawful association which provides for punishment with imprisonment for a term which may extend to two years and also shall be liable to fine. Section 11 deals with penalty for dealing with fund of an unlawful association which speaks of imprisonment and also with fine. Section 12 provides for penalty for contravention of order made in respect of a notified place. Section 13 provides for punishment for unlawful activities and it is severe. Section 13 reads as follows :—

"13. Punishment for unlawful activities (1) Whoever.

(a) takes part in or commits, or (b) advocates, abets, advises or incites the commission of, any unlawful activity, shall be punishable with imprisonment for a term which may extend to seven years and shall also be liable to fine.

(2) Whoever, in any way, assists any unlawful activity of any association, declared unlawful under Section 3, after the notification by which it has been so declared has become effective under Sub-section (3) of that Section, shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.

(3) Nothing in this section shall apply to any treaty, agreement or convention entered into between the Government of India and the Government of any other country or to any negotiations therefore carried on by any person authorised in this behalf by the Government of India."

30. Section 14 makes the offence to be cognizable under the Code of Criminal Procedure. Section 15 speaks of continuance of association and the same reads as follows :—

"15. Continuance of association—An association shall not be deemed to have ceased to exist by reason only of any formal act, of its dissolution or change of name but shall be deemed to continue so long as any actual combination for the purposes of such association continues between any members thereof."

31. Section 16 bars the jurisdiction of Civil Courts. Section 17 provides that "No court shall take cognizance of any offence punishable under this Act except with the previous sanction of the Central Government or any officer authorised by the Central Government in this behalf."

32. Section 18 provides protection in respect of action taken in good faith. Section 19 empowers the Central Government to delegate and the same is as follows :—

"19. Power to delegate.—The Central Government may, by notification in the Official Gazette, direct that all or any of the powers which may be exercised by it under Section 7, or Section 8, or both, shall, in such circumstances and under such conditions, if any, as may be specified in the notification, be exercised also by any State Government and the State Government may, with the previous approval of the Central Government, by order in writing direct that any power which has been directed to be exercised by it shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised by any person subordinate to the State Government as may be specified therein"



33. Section 20, which is an interpretation section, reads as follows :—

“20. Effect of Act and rules, etc., inconsistent with other enactments.—The provisions of this Act or any rule or order made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any instrument having effect by virtue of any enactment other than this Act.”

34. Section 21 empowers the Central Government to make rules.

35. By virtue of the powers conferred under Section 21, the Central Government framed the unlawful Activities (Prevention) Rules, 1968. A few of the provisions of the Rules have to be noticed. Rule 3 reads as follows:—

“3. Tribunal and District Judge to follow rules of evidence.—(1) In holding an inquiry under Sub-section (3) of section 4 or disposing of any application under Sub-section (4) of Section 7 or Sub-section (8) of section 8, the Tribunal or the District Judge, as the case may be, shall, subject to the provisions of sub-rule (2), follow, as far as practicable, the rules of evidence laid down in the Indian Evidence Act, 1872 (1 of 1872).

(2) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), where any books of account or other documents have been produced before the “Tribunal or the Court of the District Judge by the Central Government and such books of account or other documents are claimed by that Government to be of a confidential nature then, the Tribunal or the Court of the District Judge, as the case may be, shall not,—

- (a) make such books of account or other documents a part of the records of the proceedings before it; or
- (b) allow inspection of, grant a copy of, the whole of or any extract from, such books of account or other documents by or to any person other than a party to the proceedings before it.”

The rule clearly states as far as practicable the rules of evidence laid down in the Evidence Act should be followed. Rule 5 reads as follows :—

“5. Documents which should accompany a reference to the Tribunal. Every reference made to the Tribunal under Sub-section (1) of Section 4 shall be accompanied by—

- (i) a copy of the notification made under Sub-section (1) of Section 3, and
- (ii) all the facts on which the grounds specified in the said notification are based :

Provided that nothing in this rule shall require the Central Government to disclose any fact to the Tribunal which that Government considers against the public interest to disclose.”

36. Rule 14 enables the Tribunal to sit in private and the same reads as follows :—

“Power of Tribunal or District Judge to sit in private.—Where any request is made by the Central Government so to do, it shall be lawful for the Tribunal or the District Judge, as the case may be, to sit in private and to admit at such sitting such persons whose presence is considered by the Tribunal or the District Judge, as the case may be, to be necessary for the proper determination of the matter before it or him.”

37. I do not want to expatiate on the interpretation of the provisions of the Act and the Rules because their Lordships of the Supreme Court in *Jamaat-E-Islami Hind vs. Union of India*, (1995) 1 Supreme Court Cases 428 have very beautifully laid down the law on the point and indicated in unmistakable term how the Tribunal constituted under the Act should act about the task of considering the notification under section 4 of the Act. In paragraph 13 Their Lordships of the Supreme Court observed as under :—

“In our opinion, the above scheme of the Act clearly brings out the distinction between this statute and the scheme in the preventive detention laws making provision therein for an Advisory Board to review the detention. The nature of the inquiry preceding the order made by the Tribunal under Section 4 of the Act, and its binding effect, give to it the characteristic of a judicial determination distinguishing it from the opinion of the Advisory Board under the preventive detention laws.

The Supreme Court had cautioned that there is difference between this Act and the preventive detention laws. In paragraph 19 Their Lordships have delineated the exact scope of the determination by the Tribunal. The said para reads as under :—

“In our opinion, the test of factual existence of grounds amenable to objective determination by the court for adjudging the reasonableness of restrictions placed on the right conferred by Article 19(1)(c) to form associations, in the scheme of the Unlawful Activities (Prevention) Act, 1967, is equally applicable in accordance with the decision in *V. G. Row*. It is, therefore, this test which must determine the meaning and content of the adjudication by the Tribunal of the existence of sufficient cause for declaring the association to be unlawful under the Act. A different construction to equate the requirement of this Act with mere subjective satisfaction of the Central Government, when the power to declare an association to be unlawful depends on the factual existence of the grounds which are amenable to objective determination, would



result in denuding the process of adjudication by the Tribunal of the entire meaning and content of the express adjudication."

Again in paragraph 21 Their Lordships of the Supreme Court pathly observed :—

"To satisfy the minimum requirements of a proper adjudication, it is necessary that the Tribunal should have the means to ascertain the credibility of conflicting evidence relating to the points in controversy. Unless such a means is available to the Tribunal to determine the credibility of the material before it, it cannot choose between conflicting material and decide which one to prefer and accept. In such a situation, the only option to it would be to accept the opinion of the Central Government, without any means to test the credibility of the material on which it is based. The adjudication made would cease to be an objective determination and be meaningless, equating the process with mere acceptance of the ipse dixit of the Central Government. The requirement of adjudication by the Tribunal contemplated under the Act does not permit abdication of its function by the Tribunal to the Central Government providing merely its stamp of approval to the opinion of the Central Government. The procedure to be followed by the Tribunal must, therefore, be such which enables the Tribunal to itself assess the credibility of conflicting material on any point in controversy and evolve a process by which it can decide whether to accept the version of the Central Government or to reject it in the light of the other view asserted by the association. The difficulty in this sphere is likely to arise in relation to the evidence or material in respect of which the Central Government claims non-disclosure on the ground of public interest."

38. In the instant case before me the Central Government has claimed non-disclosure claiming privilege as anticipated by Supreme Court and I shall deal with it when I consider the arguments advanced on behalf of the Central Government.

39. Their Lordships again have broadly indicated the procedure to be followed by the Tribunal in paragraph 22 which reads as follows :—

"It is obvious that the unlawful activities of an association may quite often be clandestine in nature and, therefore, the source of evidence of the unlawful activities may require continued confidentiality in public interest. In such a situation, disclosure of the source of such information, and, may be, also full particulars thereof, is likely to be against the public interest. The scheme of the Act and the procedure for inquiry indicated by the Rules framed thereunder provide for maintenance of confidentiality, whenever required in public interest. However, the non-

disclosure of sensitive information and evidence to the association and its office-bearers, whenever justified in public interest, does not necessarily imply its non-disclosure to the Tribunal as well. In such cases where the Tribunal is satisfied that non-disclosure of such information to the association or its office-bearers is in public interest, it may permit its non-disclosure to the association or its office-bearers, but in order to perform its task of adjudication as required by the Act, the Tribunal can look into the same for the purpose of assessing the credibility of the information and satisfying itself that it can safely act on the same. In such a situation, the Tribunal can devise a suitable procedure whereby it can itself examine and test the credibility of such material before it decides to accept the same for determining the existence of sufficient cause for declaring the association to be unlawful. The materials need not be confined only to legal evidence in the strict sense. Such a procedure would ensure that the decision of the Tribunal is an adjudication made on the points in controversy after assessing the credibility of the material it has chosen to accept, without abdicating its function by merely acting on the ipse dixit of the Central Government. Such a course would satisfy the minimum requirement of natural justice tailored to suit the circumstances of each case, while protecting the rights of the association and its members, without jeopardising the public interest. This would also ensure that the process of adjudication is not denuded of its content and the decision ultimately rendered by the Tribunal is reached by it on all points in controversy after adjudication and not by mere acceptance of the opinion already formed by the Central Government."

40. To facilitate the Tribunal to adopt a procedure depending upon the totality of the circumstances of the case Their Lordships were pleased to provide said-lines for the Tribunal to meet any contingency. The words employed by Their Lordships are pregnant with meaning and in paragraph 25 would observe :

"Such a modified procedure while ensuring confidentiality of such information and its source, in public interest, also enables the adjudicating authority to test the credibility of the confidential information for the purpose of deciding whether it has to be preferred to the conflicting evidence of the other side. This modified procedure satisfies the minimum requirements of natural justice and also retains the basic element of an adjudicatory process which involves objective determination of the factual basis of the action taken."

Their Lordships had been pleased to take pains again guide to the Tribunal as to how it should consider the materials placed by the Government

In paragraph 26 of the Judgment Their Lordships are pleased to observe:—

“An authorised restriction saved by Article 19(4) on the freedom conferred by Article 19(1)(c) of the Constitution has to be reasonable. In this statute, provision is made for the notification to become effective on its confirmation by a Tribunal constituted by a sitting High Court Judge, on adjudication, after a show-cause notice to the association, that sufficient cause exists for declaring it to be unlawful. The provision for adjudication by judicial scrutiny, after a show-cause notice, of existence of sufficient cause to justify the declaration must necessarily imply and import into the inquiry, the minimum requirement of natural justice to ensure that the decision of the Tribunal is its own opinion, formed on the entire available material, and not a mere imprimatur of the Tribunal affixed to the opinion of the Central Government. Judicial scrutiny implies a fair procedure to prevent the vitiating element of arbitrariness. What is the fair procedure in a given case, would depend on the materials constituting the factual foundation of the notification and the manner in which the Tribunal can assess its true worth. This has to be determined by the Tribunal keeping in view the nature of its scrutiny, the minimum requirement of natural justice, the fact that the materials in such matters are not confined to legal evidence in the strict sense, and that the scrutiny is not a criminal trial. The Tribunal should form its opinion on all the points in controversy after assessing for itself the credibility of the material relating to it, even though it may not be disclosed to the association, if the public interest so requires.”

Their Lordships would indicate the requirements of a valid adjudication in paragraph 27 in the following words :—

“It follows that, ordinarily the material on which the Tribunal can place reliance for deciding the existence of sufficient cause to support the declaration, must be of the kind which is capable of judicial scrutiny. In this context, the claim of privilege on the ground of public interest by the Central Government would be permissible and the Tribunal is empowered to devise a procedure by which it can satisfy itself of the credibility of the material without disclosing the same to the association, when public interest so requires. The requirements of natural justice can be suitably modified by the Tribunal to examine the material itself in the manner it considers appropriate, to assess its credibility without disclosing the same to the association. This modified procedure would satisfy the minimum

requirement of natural justice and judicial scrutiny. The decision would then be that of the Tribunal itself.”

Their Lordships ultimately said about the materials placed by the Central Government in paragraph 30 in the following words :—

“The allegations made by the Central Government against the Association—Jamaat-E-Islami Hind—were totally denied. It was, therefore, necessary that the Tribunal should have adjudicated the controversy in the manner indicated. Shri Soli J. Sorabjee, learned counsel for the Association, Jamaat-E-Islami Hind, contended that apart from the allegations made being not proved, in law such acts even if proved, do not constitute “unlawful activity” within the meaning of that expression defined in the Act. In the present case, the alternative submission of Shri Sorabjee does not arise for consideration on the view we are taking on his first submission. The only material produced by the Central Government to support the notification issued by it under Section 3(1) of the Act, apart from a resume based on certain intelligence reports, are the statement of Shri T. N. Srivastava, Joint Secretary, Ministry of Home Affairs and Shri N. C. Padhi, Joint Director, IB. Neither Shri Srivastava nor Shri Padhi has deposed to any fact on the basis of personal knowledge. Their entire version is based on official record. The resume is based on intelligence reports submitted by persons whose names have not been disclosed on the ground of confidentiality. In other words, no person has deposed from personal knowledge whose veracity could be tested by cross-examination. Assuming that it was not in public interest to disclose the identity of those persons or to produce them for cross-examination by the other side, some method should have been adopted by the Tribunal to test the credibility of their version. The Tribunal did not require production of those persons before it, even in camera, to question them and test the credibility of their version. On the other hand, the persons to whom the alleged unlawful acts of the Association are attributed filed their affidavits denying the allegations and also deposed as witnesses to rebut these allegations. In such a situation the Tribunal had no means by which it could decide objectively, which of the two conflicting versions to accept as credible. There was thus no objective determination of the factual basis for the notification to amount to adjudication by the Tribunal, contemplated by the statute. The Tribunal has merely proceeded to accept the version of the Central Government without taking care to know even itself the source

from which it came or to assess credibility of the version sufficient to inspire confidence justifying its acceptance in preference to the sworn denial of the witnesses examined by the other side. Obviously, the Tribunal did not properly appreciate and fully comprehend its role in the scheme of the statue and the nature of adjudication required to be made by it. The order of the Tribunal cannot therefore, be sustained."

41. In the notification issued by the Government, there are 16 paragraphs. In paragraph 4, six grounds are mentioned. In paragraphs 5, 6, 7 and 8, four grounds are mentioned. I do not want to extract the speeches referred to in these paragraphs because nobody has taken serious note of the speeches except the Central Government and nothing is placed before me to show that those speeches, as a matter of fact created any tension. I feel, it is not necessary to give publicity now to those speeches. The respondent VHP filed a detailed counter affidavit denying the allegations in the notification. It is specifically denied that no speech, attributed to individuals, was ever made and the Central Government should prove that the speeches were made by the individuals, referred to therein, by producing necessary material. But the respondent admitted that the meetings were held on those dates, referred to in the notification. The Central Government filed a rejoinder.

42. The following issues were framed on 6th of April, 1995 for consideration :

- "1. Whether there is sufficient cause for declaring the Vishwa Hindu Parishad as an unlawful association under the Unlawful Activities (Prevention) Act, 1967 ?
2. Whether the Notification No. S. O. 41(E), dated 14th of January, 1995, issued by the Central Government, is liable to be confirmed ?
3. Whether the grounds mentioned in the Notification and the Resume would not constitute sufficient cause to declare the Vishwa Hindu Parishad as an unlawful association ?

43. The Central Government filed the following documents :

1. Memorandum of Association & Rules and Regulations of VHP (Ex. P.1.).
2. Notification dated 10-12-1992 (Ex. P.2.).
3. Notification dated 18-6-1993, decision of Hon'ble Mr. Justice P. K. Bahri Tribunal (Ex. P.3.).
4. Extract of the Field Report dated 25-6-1993 (Ex. P.4.).
5. Extract of the Field Report dated 9-9-1993 (Ex. P.5.).
6. Extracts of the Field Report dated 15-6-1993 (Ex. P.6.).

7. Extracts of the Field Report dated 17-9-1994 (Ex. P.7.).
8. Extracts of the Field Report dated 27-10-94 (Ex. P.8.).
9. Extracts of the Intelligence Report dated 5-12-1994 (Ex. P.9.).
10. Extracts of the Field Report dated 25-12-94 (Ex. P.10.).
11. Extracts of the Field Report dated 7-1-1995 (Ex. P.11.).
12. Extracts of the Field Report dated 12-1-95 (Ex. P.12.).
13. Notification dated 14-1-1995 (Ex. P.13.).
14. Memorandum of Association and Rules and Regulations of VHP (Ex. P.14.).
15. List of Members of Kendriya Marg Darshak Mandal (Ex. P.15.).
16. List of Governing Council of VHP (Ex. P.16.).
17. List of Board of Trustees (Ex. P.17.).
18. Book—"THE HINDU AWAKENING RETROSPECT AND PROMISE" (Ex. P.18.).
19. Passage at Page 28 of the Book (Ex. P.18[A]).
20. Newspaper report from Hindustan Times dated 8-5-1995 (Ex. P.19.).
21. Newspaper report Article from Hindustan Times dated 5-4-1994 (Ex. P.20.).
22. Newspaper report from the Times of India dated 9-11-1994 (Ex. P.21.).
44. The respondent filed the following documents :
  1. The Pioneer (Newspaper dated 27-12-1994) (Ex. R.1.).
  2. Amar Ujjala (Newspaper dated 26-12-1994) (Ex. R.2.).
  3. Hindustan Times (Newspaper dated 12-1-95) (Ex. R.3.).
  4. Economic Times (Newspaper dated 7-1-95) (Ex. R.4.).

45. The Central Government examined 11 witnesses and the Respondent examined only one witness.

46. The learned senior counsel Mr. P. P. Malhotra assisted by Mr. Madan Lokur for the Central Government and Mr. L. R. Gupta learned senior counsel assisted by Mr. D. R. Mahajan, The learned senior counsel Mr. R. P. Bansal supplemented the arguments of Mr. L. R. Gupta. I must place on record my sincere appreciation of the assistance rendered by the learned counsel and all parties concerned. The

learned senior counsel argued the matter with a dexterity and skill with depth and incisiveness and but for their able arguments I would not be able to focus my attention on the real points in controversy. It was really tour de force of the learned counsel Mr. P. P. Malhotra and Mr. L. R. Gupta.

47. Before I analyse the evidence, I would like to note the arguments of the learned counsel on both sides.

48. Mr. P. P. Malhotra, learned senior counsel for the Central Government submitted that the materials placed on record by the Central Government along with the oral evidence would prove that the speeches were made by prominent members of VHP including members of Marg Darshak Mandal and the meetings were organised by the VHP and other frontal Organisations of the VHP and the speeches referred to in the notification. On a reading of the speeches positively would create an impression that they would promote or attempt to promote on grounds of religion, disharmony, which are prejudicial to the maintenance of harmony between different religious communities and which are likely to disturb the public tranquility. Mr. Malhotra emphatically argued that the likelihood of disturbance of public tranquility should be considered in the context of the words used in the speeches and actual consequence of the speeches is not at all necessary. In other words, it is not for the Central Government to prove that after the speeches were made there were tensions in the community, there were clashes which disturbed the tranquility in the society. Mr. Malhotra also claimed privilege, with reference to the disclosure of certain things, by filing an affidavit by the Secretary, which I shall deal with it after the analysis of the evidence. In sum and substance, the argument of Mr. Malhotra is that the Central Government is fully justified in issuing the notification and the materials produced by the Central Government have been proved and the Central Government has acted in accordance with the provisions of the Act.

49. Mr. Malhotra, learned senior counsel submitted that on a reading of the evidence, the facts whether the speeches were made or not should be decided on broad probabilities, especially when the speakers did not enter the witness box before this Tribunal. I am afraid, the contention cannot at all be accepted. The question of probability would arise only if the Government has produced, prima facie, acceptable material in accordance of the provisions of the Evidence Act and assuming that the Government need not prove, as in criminal cases, beyond all reasonable doubt. If the law is not persistent demandeur of clear proof of basic facts necessary for the declaration under the Act, power is likely to be misused on extraneous considerations.

50. Per contra, Mr. L. R. Gupta learned senior counsel vehemently contended that VHP is doing laudable services to all the communities by running Schools, Hospitals, Charitable Institutions and the Central Government had issued the notification on extraneous reasons with a view to appeasing a section of the community and the speeches were not made by any of the persons mentioned in the notification. They are all fabricated and in any event the

learned counsel proceeded that the speeches themselves are not likely to disturb the public tranquility and the Central Government should prove the speeches created tension in the society.

51. About the privilege claimed by the Central Government, he submitted that no question of privilege would arise because as per the decision of the Supreme Court in (1995) 1 Supreme Court Cases 428 (supra), it is for the Central Government to prove the existence of sufficient cause and the privilege have been claimed without any justification whatsoever. It has also submitted that it is only politically motivated and there is malice in law in issuing the notification and, therefore, the notification should be cancelled.

52. First of all, I have to consider whether the Central Government has established that speeches were made by the speakers, as mentioned in the notification. I propose to deal with each one of the speeches mentioned in the notification and consider the oral evidence adduced by the Central Government in this behalf.

53. In paragraph 4(i) of the notification, reference is made to a speech made on 25-6-93 by a prominent member of VHP. As I stated earlier, I do not want to make any reference to the context of the speech. In Annexure IV to the reference an extract of the speech is given.

54. To prove this speech, P.W-7 is examined. He filed an affidavit which was treated as his examination-in-chief. He was examined on 27-4-95. This witness admits "I can read English. If anybody dictates to me in English I can write it in English but I cannot speak English. This shows how the witness is avoiding straight question. Next question 2:—

Q. 2 Please state your educational qualifications ?

Ans. : I cannot disclose it to you as to what are my educational qualifications but I can disclose it to the Hon'ble Tribunal.

This shows that the witness is avoiding to disclose the educational qualification with a purpose. By saying that he can disclose to the Tribunal the witness thinks that he is ingenious. He admits to answer to question No. 6 that he joined I.B. Department as a constable in 1978 and he was promoted as H.C. in 1988 and he continues to be so.

Q 11. What was the nature of your duty, namely to cover the meeting ?

Ans. I was directed to note down the speeches of the speakers of that meeting.

He admits that he was directed to take down the speeches of the speakers. The meeting was in Haridwar. In the affidavit filed by the witness, Haridwar is not mentioned and no explanation is forth coming for this important omission. He admits that his counsel prepared affidavit and he gave instructions in Hindi and, therefore, his knowledge of English one can easily understand. In order to find out the knowledge of the witness about the Ram Janam Bhoomi Nyas Manch, a question was asked.

Q. 26. Did you ever attend any meeting called by Ram Janam Bhoomi Nyas Manch earlier to 25th of June 1993 ?

Ans. I did not attend any meeting prior to 25th of June 1993.

Therefore, from this answer it is clear he is not conversant with the Manch. He also admits that he has no knowledge whether the meeting of Ram Janam Bhoomi Nyas Manch was announced through any posters, hand bills or leaflets or by any other mode. It is very interesting to notice the answer to question 29.

Q. 29. Where did you see the banner of Ram Janam Bhoomi Nyas Manch and when did you see that ?

Ans. I can not disclose it to you but I can disclose it to the Hon'ble Tribunal.

By giving such an answer the witness feels that he can project himself as a truthful witness. The witness was hesitating to answer the question No. 34. I found him taking time to answer the question because he was not aware of the facts.

Q. 34. Did you see any document, poster, hand bill or leaflet showing that the said meeting was called by VHP ?

Ans. (The witness is taking time to answer the question).

I did not find or see any document, poster, hand bill or leaflet indicating that a meeting under the auspices of the Ram Janam Bhoomi Nyas Manch would take place on 25th of June 1993 by VHP. I have no knowledge other than what my superior officer told me that a meeting by Ram Janam Bhoomi Nyas Manch was to be held.

According to the witness, that the meeting started consisting of about 100 persons at 10 A.M. and Swami Prakashanandji started his speech at 11 A.M. and he finished it within 5 or 6 minutes. How the witness gives the same answer as a burden of the song to avoid further probing of the matter by the counsel vide questions 40 and 41 and their answers.

Q. 40. Did you ever meet Swami Prakashanandji ?

Ans. I can not disclose it to you but I can disclose it to the Hon'ble Tribunal.

Q. 41. Is it not a fact that Swami Prakashanandji is a Sadhu/Saint of great prominence ?

Ans. I cannot disclose it to you but I can disclose it to the Hon'ble Tribunal.

Having answered the above two questions, the witness admits that Swami Prakashanandji is a Sanyasi. I have to note question No. 42 and answer.

Q. 42. Is it not a fact that Swami Prakashanandji has already renounced the worldly life and he is only a Sanyasi ?

Ans. Yes he has renounced the worldly and he is a Sanyasi.

Therefore, the witness is not willing to speak the truth. Again the answer to question No. 47 is interesting and, therefore, the question and answer are extracted.

Q. 47. Did you take any note book to note down the speech of Swami Prakashanandji ?

Ans. I can not disclose it to you but I can disclose it to the Hon'ble Tribunal.

Having said this, it is interesting to notice the answer to question No. 48.

Q. 48. Please state through which device or method you made record or note of the speech of Swami Prakashanandji ?

Ans. I had a small paper with me on which I noted down the speech of Swami Prakashanandji.

In the extract of the speech, names of about 40 participants are given. In the affidavit also the same names are repeated. The witness had a very small piece of paper and when he was asked how he was able to note down the names of all these persons he gives the answer that he had noted down some and others he kept in memory. I have to extract question No. 50 and answer.

Q. 50. Please tell this Hon'ble Tribunal as to whether you noted down the names of the persons mentioned in your affidavit on the said piece of paper or not ?

Ans. I noted down some of the names of the persons who are mentioned in my affidavit while I kept the names of other persons in my memory.

Again, the answer to question No. 52 brings out that the witness has been projected for the purpose of this case.

Q. 52. How many names of the persons mentioned in your affidavit were noted down by you ?

Ans. I noted down the names of 5-7 persons while I kept in my memory the names of others.

He gives another version as I find to answer to question No. 53.

Q. 53. After you had covered the meeting and come back to your office did you inform or disclose to your officer all the names which you had noted down and which you had kept in your memory ?

Ans. I had given the names of all the persons whom I have mentioned in my affidavit through my officer.

It is obvious that the witness is not coming forward with truth. In order to find out what exactly he had noted, if at all he had attended the meeting, what he has to say is to be seen from the following questions and answers of the witness.

Q. 54. Please state as to what did you report to your superior officer on 25th June, 1993?

Ans. Whatever I had heard from Swami Prakashanandji I communicated to my superior officer.

Q. 55. Did you communicate in writing or orally about the speech of Swami Prakashanandji?

Ans. I orally told the superior officer what I had noted down on the piece of paper.

Q. 56. Please state as to whether your said superior officer noted down in writing somewhere or he simply heard orally?

Ans. The superior officer noted down in writing whatever I had communicated to him.

Q. 57. Did you read out whatever you had noted down on the piece of paper or you orally communicated what you had heard?

Ans. : Whatever I had heard and noted down I communicated the same to the superior officer.

According to the witness, the superior officer prepared the report, the report was typed out in half or 3/4th of the paper. The witness admits that he did not sign the report. To the question whether the superior officer signed the report, whether the witness says (question 65) that he cannot disclose it to the counsel but he can disclose it to the Tribunal. In answer to question No. 76, the witness could not give all the names which he had mentioned in the affidavit. It is clear from his evidence that the names of 40 persons had been noted down in Annexure IV to the reference and that is given in the affidavit. If the witness had attended the meeting, he would have certainly taken a clean note book, having regard to the seriousness of the matter, noted down the names and also the speeches. About the after effect of the speech, I have to note questions No. 77 and 78 and their answers.

Q. 77. After you had returned to your office on 25th June, 1993 after having noted down the speech of Swami Prakashanandji was there any commotion, tension or violence in Haridwar on account of the speech stated to have been delivered by Swami Prakashanandji or speech of any other person who participated in the said meeting?

Ans. : No.

Q. 78. So long as you stayed in the meeting was there any commotion, tension or violence?

Ans. : No.

Therefore, it is obvious that the alleged speech did not have any effect and was not the cause for any tension or any clash.

55. I directed the Central Government to produce the files relating to the sending of the messages. There were two files produced by the learned senior counsel

Mr. Malho'ra. In one file, it is mentioned that pertaining to Headquarters and in the other it is mentioned relating to S.I.B.

56. P. W. 10 Mr. N. C. Padhi seeking to buttress the evidence of the witnesses and attempted to give the procedure adopted by the I.B. in his own way indicated that messages were sent by Fax in all cases and records were maintained then and there. Therefore, relating to this meeting dated 25-6-93 I perused the records. I do not want to give the details of the places and the other things. One thing is very clear that if a Fax message had been given there will be a transmission report. From a perusal of the files, I am not able to come to the conclusion that they were kept in the normal course of business and they reflect the correct message. A significant fact to be noticed is, the witness has not signed any report. According to him, he had a small paper. That paper is not found in the files. The field report, as it were, is signed by a superior officer, other than the witness and that officer, who has signed the field report, has not been examined and made available for cross examination. From the files, there is no indication that with reference to the meeting dated 25-6-93 this witness attended the meeting. Therefore, there is no evidence on record to show that P.W. 7 was the person who attended the meeting. There is absolutely nothing on record to show what he recorded when he attended the meeting. In the absence of these two vital materials, I do not think that I can base my conclusion on the evidence of P.W. 7 about the contents of the speech. I am not able to resist the conclusion that P.W. 7 is not the person who attended the meeting. The field report found in the file is not the speech made by the speaker in the meeting. I find P.W. 7 wholly untrustworthy. Therefore, I have no hesitation in rejecting the evidence of P.W. 7. Therefore, my conclusion with reference to the meeting dated 25-6-93, as mentioned in paragraph 4(i) of the notification is, there is no proof of any such speech and the field report is not at all acceptable. Therefore, the Government has not proved ground No. 1 in paragraph 4 in the notification.

57. I now go to the speech referred to in para 4(ii) in a public meeting at Ahmedabad on 8-9-93 by Shri Ashok Singhal. To prove this speech, the Central Government examined P.W. 1. According to him, he attended the meeting and the meeting was attended by thousand persons. He was cross examined on 20-4-95. According to him, he is Inspector of 1st Grade. The name of the witness, father's name, occupation and address are not given. The learned senior counsel Mr. L. R. Gupta raised an objection that these particulars should have been given to the respondent and inasmuch as they were not given, the evidence of the witness is inadmissible. This is so with reference to all the witnesses. After the analysis of the evidence, I shall consider this aspect tersely. He would state that on 1-9-93 he was instructed to attend the public meeting to be held on 8-9-93 and he was directed to cover a speech of Shri Ashok Singhal. He would admit that he reached Ahmedabad in the last week of August 1993 and he stayed at Ahmedabad till 10-9-93. How he did this job of noting the speech could be seen from the following.

Q. 45. Had you taken a note book like a reporter ?  
Ans. I had taken blank papers.

Q. 46. When you attended a meeting did you note down on those blank papers the speech of Mr. Ashok Singhal ?

Ans. Some important points which I heard noted the same on the blank papers.

Q. 47. Please state whether you had noted the points on one sheet of paper or several sheets of paper ?

Ans. On one sheet of paper on one side.

Q. 52. Did you submit this paper sheet, on which you had noted down the important points, to your immediate boss ?

Ans. No.

He admits that he destroyed the papers and destruction of the paper was made on 9-6-93 itself. He admits that the filed report was prepared by his immediate boss. He gives an interesting answer to question No. 62 and also question No. 63.

Q. 62. Can you give the reason as to why, when the report had been prepared by your immediate boss, the same was not shown to you then and there ?

Ans. It takes time to prepare the report. As such, the report is shown to me afterwards.

Q. 63. Whether this report was signed by you as duly confirmed to be correct ?

Ans. No.

He also admits that there was no violence, commotion or tension after the meeting. It was suggested to him that he did not attend the meeting and he had been simply put up by the Government to support its case.

58. With reference to this meeting also, the officer, who prepared the report, has not been examined. There is nothing on record to show that he attended the meeting. One would expect the I.B. to maintain a record showing the work allotted to a particular officer for covering a particular meeting or one would expect the I.B. to maintain what is called movement register. Otherwise, credibility of the functioning of the I.B. itself would be doubted. I am sure such records are maintained by the I.B. Department and but for reasons best known to it they are not forthcoming. This impression is with reference to all the witnesses examined by the Central Government i.e. P.W. 1 to P.W. 9. In the absence of this record from the I.B., I have not been able to persuade myself to accept that P.W. 1 attended the meeting on 8-9-93 at Ahmedabad. Consequently, there is absolutely no material that the speech, as alleged in paragraph 4(ii) of the notification, was made by Shri Ashok Singhal. Therefore, this ground also is not proved.

59. Then I come to the speeches referred to in paragraph 4(iii) and 4(iv). In paragraph 4(iii) reference is made to the speech of Shri Ram Chandra

Parambans in Ayodhya on 14-9-93. In paragraph 4(iv), reference is made to the speech of Shri Nirtya Gopal Das in Ayodhya on 14-9-93. The extract of the filed report is given as Annexure VI. (Ext. P. 6). To prove these two speeches, P.W. 2 is examined. He filed his affidavit which was treated as his examination in chief. He would state that he is in the employment of I. B. since 1970 and on the date of evidence he was working as Inspector. According to him, the meeting Saint Sammelan commenced at 4 P.M. and lasted upto 6.30 P.M. Here also the witness would state in what manner he noted down the speeches.

Q. 131. Do you know that the entire area of 2-1/2 acres, excluding the disputed structure of Ramjanam Bhoomi came under the control of U.P. Government and others and that control remained upto 6th of December, 1992 ?

Ans. I do not know.

Q. 134. Please tell whether you noted down the points on the paper sheets in the Sammelan itself ?

Ans. I cannot disclose to you but I can disclose to the Hon'ble Tribunal. Again said, that I can disclose that I noted the points on the sheet of paper during the Sammelan itself.

Q. 135. When you were noting down the points of the speeches in your paper, whether you were visible to the eyes of the persons who were attending that Sammelan ?

Ans. I cannot disclose to you but I can disclose to the Hon'ble Tribunal.

Q. 136. Now please tell did, anybody objected to your making notes on the paper ?

Ans. I cannot disclose to you but I can disclose to the Hon'ble Tribunal.

Q. 137. Were you beaten by anybody or prevented by anybody from noting down those points on the paper ?

Ans. I cannot tell to you but I can tell to the Hon'ble Tribunal.

Q. 138. Did you file any report with the police that you had been beaten ?

Ans. I did not file any report.

Q. 139. Did you inform your boss that the people were noticing you to take notes of the speeches and they objected to it or did not object to it ?

Ans. I cannot disclose to you but I can disclose to the Hon'ble Tribunal.

Q. 140. Where those papers are ?

Ans. I have destroyed the same.

Q. 141. When did you destroy them ?

Ans. After about a week.



Q. 142. Did you destroy them on your own or at the direction of the immediate boss ?

Ans. I destroyed of my own and not at the instance of my immediate boss.

He admits that he did not sign the report and have also the person who has signed the filed report has not been examined. The witness also admits that there was no commotion or tension. In respect of these two speeches also, I find the files are not kept in order and they do not disclose the real state of affairs. Therefore, I am not able to believe the evidence of P.W. 2. Therefore, Central Government has miserably failed to establish that Shri Ram Chandra Paramhans and Shri Nirtya Gopal Das made such speeches, mentioned in notification in paragraphs 4(iii) and (iv).

60. I now pass on to the speech, referred in paragraph 4(v) of the notification. The speech is alleged to have been made by Acharya Dharmendra in a public meeting on 16-9-94 at Nagpur. The extract of the filed report is given as Annexure VII (Ext. P. 7). To prove the speech, P.W. 3 is examined. He filed an affidavit which was treated as examination in chief. When the witness was asked to give his designation or rank, he would answer by stating that he can disclose the same only to the Tribunal. To elicit whether he had attended any meeting held by the Nyas, a question was asked —

Q. 44. Please state whether apart from this meeting held on 16-9-1994 you attended any other meeting held by the Nyas in which the above named persons or leaders participated ?

Ans. I recollect only one meeting of Nyas in which the Nyas leaders participated.

According to him, he attended only one meeting. This shows how he wants to express that he knows something about the Nyas. See his answers to questions 47 to 49.

Q. 47. Did any person declare or state in any of the meeting which you have covered that Shri Acharya Dharmendra is the member of Nyas and connected with V.H.P.

Ans. I recollect one meeting in which Shri Acharya Dharmendra attended the meeting of Nyas.

Q. 48. Was it discussed in the said meeting that Shri Acharya Dharmendra is a member of the nyas ?

Ans. Yes.

Q. 49. Who discussed it ?

Ans. It was about in the year 1973 that such a thing was discussed in the said meeting.

This clearly exposes the falsity of the witness. With a view to butterassing what he has said earlier he refers to something which happened in 1973. The following questions and answers would show that the witness is not telling the truth.

Q. 64. Whether you alone attended the meeting or with other fellows of your department attended that meeting ?

Ans. I attended the said meeting with one of my colleagues.

Q. 65. Can you give the reason as to why two inspectors were deputed to cover that meeting when one was enough ?

Ans. I was for the department to decide.

Q. 66. Kindly tell whether the speech of Shri Acharya Dharmendra was published in any newspaper ?

Ans. I was published in the local newspaper of Nagpur.

Q. 67. Please state whether you took a handbook like a press reporter or otherwise with you to note down the speech of Acharya Dharmendra ?

Ans. I carried some blank papers.

Q. 68. Did you note down the entire speech of Shri Acharya Dharmendra ?

Ans. I note the important aspects of the speech made by Acharya Dharmendra.

Q. 69. Whether it was recorded in one or two pages ?

Ans. One and a half page was used for jotting down the points.

Q. 70. Is the case of your colleague was same ?

Ans. I did not see as to how many papers were used by my colleague who had accompanied me.

Q. 71. Please state whether those papers are with you or not ?

Ans. Those papers are not with me. I hand destroyed the same as per our practice.

Q. 72. Whether such practice is in pursuance of directions of your department or your officer?

Ans. For our own memory, we noted down the important aspect of the speech on the paper.

He further makes me confirm my view about his withholding facts from the following.

Q. 73. Please tell whether you reported the important aspects of the speech of Shri Acharya Dharmendra in writing to your immediate boss.

Ans. I prepared report in writing. My colleague was with me. Both of us prepared that report.

Q. 74. When did you deliver his report to your immediate boss ?

Ans. I delivered it on 17-9-1994.

Q. 75. Did you deliver this report at Nagpur or at some other place ?

Ans. I can give this information to Hon'ble Tribunal and cannot give this information to you.

Q. 76. Is it a confidential matter according to you which you do not want to disclose as at what place you deliver the report according to your department ?

Ans. Yes.

He would admit

Q. 79. Please state whether this report was signed by you or unsigned ?

Ans. It was signed by me.

Such a report signed by the witness has not been produced. He would also candidly admit

Q. 77. Are there instructions of your department not to disclose all the information which I have asked from you being treated as confidential ?

Ans. Yes.

He would state that his colleague, who attended the meeting, did not sign the report. With reference to this speech also, I have perused the file and it does not inspire confidence and they do not seem to have been kept in regular course of business. I am not able to place any reliance on those files. The evidence of P.W. 3 is not at all trustworthy and I have no hesitation in rejecting the same. Therefore I am of the view that the Government has not provided that Acharya Dharmendra made such a speech, as referred to in paragraph 4(v) of the notification.

61. I now pass on to the speech, referred to in paragraph 4(vi), alleged to have been made by Shri Ram Bilas Vedanti on 26-10-94 at Ayodhya. The extract of the filed report is given as Annexure VIII (Ext. P. 8) to the reference. To prove this, P.W. 4 is examined. He filed an affidavit which is treated as his examination in chief. According to him, he is a Head Constable in the I. B. Department. How artificial the evidence of this witness is clear from the following.

Q. 10. Please state as to whether the affidavit filed by you has been drafted by you or somebody else ?

Ans. The affidavit has been drafted/prepared by some one else but it has been done with my consent.

Q. 11. Please state as to who had drafted this affidavit which you filed in this Tribunal ? Whether it has been drafted by your immediate officer or some other officer in the I.B. or a Legal Assistant in the Department of the Ministry of Home Affairs ?

Ans. It has been drafted only by a friend of mine.

Q. 12. Please state as to what avocation is being pursued or what is the occupation of that friend of yours who had drafted the affidavit for you ?

Ans. Sorry, I can disclose it only to the Hon'ble Tribunal and not to you.

When a suggestion is put to him that the affidavit was prepared by an officer in the Home Ministry, he would go to the extent of denying the suggestion. The following depositions of the witness would show that he does not know anything about the matter and he has been blabbering.

Q. 14. Do you understand English and can write in English ?

Ans. I can understand English.

Q. 15. Please state that when you are able to write English and understand English, why is it that you got the affidavit drafted by someone else ?

Ans. Though I can write and understand English but Since I am not familiar with the Court procedure and the court language which was required for framing of an affidavit, so, I got the help of my friend in drafting the affidavit.

Q. 16. Please state as to whether your friend who had drafted this affidavit for you, is an Advocate or working in the Court as an employee of the Court and is familiar with the court work?

Ans. I cannot disclose it to you but I can disclose it to the Hon'ble Tribunal.

Q. 17. When did you request your friend to draft/prepare the affidavit for you ?

Ans. I requested my friend on 22-4-1995 to prepare the draft for me.

Q. 18. Did you give instructions to your friend in writing for preparing the draft affidavit ?

Ans. No. The instructions were oral.

It is very interesting to notice what the witness has to say to a question.

Q. 19. Whether your friend noted down the instructions given by you in writing ?

Ans. According to the Court procedure he noted my one or two points.

This shows how the witness is trying to be smart. The witness goes to the extent of saying in a matter which according to the Government is very confidential because to the extent of claiming privilege how the witness has treated it lightly as a matter of no moment.

Q. 20. Please state on what particular point of time on 22-4-1995 you gave the instructions to your friend and at what place ?

Ans. The instructions were given by me to my friend at 7.30 A.M. at Delhi on 22-4-1995.

Q. 21. At what place the instructions were given by you to your friend in Delhi.

Ans. In Sultanpuri at a public place.

Q. 22. Whether that public place was a park or any other place or other type of place ?

Ans. It was Bus Stand.

Q. 23. What was the reason to give instructions to your friend at the Bus Stand ?

Ans. I had come to the Bus Stand from my house and that I was standing there. All of a sudden the said friend happened to meet me there and I explained to him my difficulty for getting an affidavit prepared. He then told me, "Why are worried ? Let us come and prepare the draft of the affidavit."

When the Government treats this as very confidential and is claiming privilege, the witness had made this the subject matter of *tete-a-tete*, with his friend. He

is not speaking a truth is further clear from the following :

Q. 24. Did your friend draft the affidavit at the Bus Stand or at some other place ?

Ans. I and my friend came back to my house and there the draft was prepared by my friend.

The witness does not belong to Delhi and he does not own a house. He further fell into the trap of the cross examining counsel being unable to tell the truth.

Q. 25. How much time was taken by your friend to prepare the draft of the affidavit ?

Ans. One or two hours.

Q. 26. Do you have a typewriter at your house ?

Ans. No.

Q. 27. Whether your friend prepared affidavit in Hindi or English ?

Ans. I prepared the draft by taking his help. He would state.

Q. 31. Please state as to whether you got that draft typed on a Typewriter or from some other mechanical process ?

Ans. I cannot disclose to you as to whether I got the draft typed on a Typewriter or on some other machine or mechanical process but I can disclose it only to the Hon'ble Tribunal.

This shows that the witness has been made to speak with reference to a matter to which he is totally an alien. He gives a very interesting explanation to what he had stated 'spoken on usual lines'.

Q. 96. You have stated in your affidavit that Shri Ram Vilas Vedanti spoke on usual lines on Hazrat Bal, Kashmir, Urdu, Mecca Khurd and Islamisation of Ayodhya. Please state as to what do you mean by saying 'spoken on usual lines' ?

Ans. By 'usual lines' I mean to say that which is often repeated or spoken by the person.

But he would state later.

Q. 98. Did you mention the context of speech about Hajratbal delivered by Vedantiji in your report ?

Ans. I did not mention it because said speech had already been reported to my senior officer.

Therefore, it is clear that the witness is not able to say what happened in the meeting. The witness would admit that he has no knowledge about whether there was any commotion or tension on account of speech, alleged to have been given by Vedantiji. About the preparation of the report, following is his evidence.

Q. 141. When did you prepare a report about the entire programme of this Saint Yatra, including the meeting held at R.D. Inter College ?

Ans. I prepared the report in the evening of 26th October, 1994.

Q. 142. Did you make report in your own hand or you typed it ?

Ans. The report was prepared by officer in front of me. I had noted down some points on paper of the meeting and the other information like gathering or the presence of any important person.

About the recording of the speeches, his evidence is following.

Q. 143. Did you take any note book to note down the speeches of the leaders which were to be delivered at the said meeting at R.D. Inter College ?

Ans. I had not taken any note book but only some blank papers.

Q. 144. Please state as to how many paper sheets had been used by you in noting down the points ?

Ans. It was only one page.

Q. 145. Did you hand over the said paper to your officer in the evening of 26th of October, 1994 ?

Ans. I did not deliver the paper to the officer. I had made rough notes of the point on that paper and I just told about those points to the officer.

He admits that he did not sign the report and that the officer who had signed the report, as I said in the case of other witnesses, that the officer who had signed the field report has not been examined. In this matter also, I saw the files. There are serious discrepancies. I do not want to elaborate except to state when the meeting was on 26-10-1994 it is stated that the extract of the speech was communicated on 6-10-1994 itself. Therefore, I am not able to believe the evidence of P.W.4 and the Central Government has miserably failed to prove that Shri Ram Vilas Vedanti made the speech, referred to in paragraph 4(vi) of the notification.

62. I now pass on to the grounds mentioned in paragraphs 5 and 6 which relate to the meeting called Virat Hindu Sangam at Lucknow on 25-12-94. In paragraph 5 of the notification, the alleged speech of Shri Ram Chandra Paramhans is referred to. In paragraph 6 in the same meeting speech of Sadhvi Ritambhara is referred to. In Annexure X (Ext. P.10) to the reference, the extract of the speeches are given. To prove these two speeches are given, 2 witnesses were examined by the Government P.W.5 and P.W. 6. P.W. 5 and P.W. 6 filed the affidavits which are identical and they were treated as their examinations in chief. P.W.5 was examined on

26-4-1995. According to him, his rank is equivalent to that of Inspector of Police. The answers to questions are :

Q. 6. What are your duties which are assigned to you as Inspector ?

Ans. I have got various duties to perform but I cannot disclose the same to you but I can disclose them to the Hon'ble Tribunal.

Q. 8. Whether your immediate superior officer or officer above your immediate superior officer supervises your duties ?

Ans. I cannot disclose it to you but I can disclose it to the Hon'ble Tribunal.

Q. 9. At what place your immediate officer is appointed ?

Ans. I cannot disclose it to you but I can disclose it to this Hon'ble Tribunal.

Q. 11. Will you kindly tell as to what kind of duties are assigned to you in writing and what kinds of duties are assigned to you orally ?

Ans. I cannot disclose it to you but I can disclose it to the Hon'ble Tribunal.

Q. 12. Whether the duty assigned to you to cover the meeting dated 25th December, 1994 was assigned to you in writing or orally ?

Ans. I cannot disclose it to you but I can disclose it to the Hon'ble Tribunal.

Q. 14. When did you reach Lucknow to cover up the meeting of Dec. 25, 1994 ?

Ans. This also I cannot disclose it to you but I can disclose it to the Hon'ble Tribunal.

The witness would state that he cannot disclose any fact to the counsel but he can disclose to the Tribunal. According to him, the witness was trying to avoid unnecessarily and it does not make sense at all. How does he come to the conclusion that though the answers to those questions would be against public interest. He admits that one of the Junior Officers of the I.B. Department was also with him in the meeting. At this juncture, I would like to mention the answer given by P.W. 6 for question No. 20.

Q. 20. Did both of you decide to attend that meeting or that you met that officer by chance in that meeting ?

Ans. I met the said officer by chance in that meeting.

63. According to P.W. 5, the meeting started at 10 A.M. and it lasted upto 2.30 P.M. The following questions and answers will show artificial nature of the evidence

Q. 25. Whether you and your junior officer both attended the meeting to cover up the same ?

Ans. Yes.

Q. 26. Whether you and your colleague had taken any Note Book to note down the speeches of the various speakers in the meeting ?

Ans. We had been keeping white papers in our pocket and no note books.

Q. 27. How many papers you had in your pocket ?

Ans. Three or four sheets of papers.

Q. 28. How many sheets were utilised by you and by your colleague ?

Ans. About three papers were used by me but I cannot tell about my colleague.

Q. 29. What did you note down in those papers ?

Ans. I noted down the names of the prominent speakers in that meeting and their speeches. I also noted down their speeches in parts. Whatever I thought proper I noted down.

Q. 30. Do you know as to what did your colleague note down ?

Ans. My colleague had written whatever he had heard. But this I came to know when we sat together and made the report.

Q. 32. Would you kindly tell as to what he had noted down ?

Ans. My colleague had noted down almost the same thing which I had noted down ?

He would admit that the notes taken by him and the colleague (P.W. 6) were not at all compared. He would state that he prepared the report about 4/5 P.M. He gives an interesting answer to question No. 36.

Q. 36. How much time it took to you to prepare the report ?

Ans. It took one week to prepare the report ?

About the preparation of the report P.W. 5 would state

Q. 37. Whether your colleague prepared his own report or not ?

Ans. : He did not prepare his own report ?

Q. 51. After you had told the points and the officer had taken down the points was any report containing the points told by you was prepared ?

Ans. Yes.

Q. 52. Who prepared that report ?

Ans. My superior officer prepared that report.

Q. 53. Was it prepared in hand or it was prepared on a typewriter ?

Ans. The report was prepared in hand. Thereafter, it was shown to me.

Q. 54. Did you read that report ?

Ans. I had read that report.

Q. 55. How many pages were utilised for incorporating the report?

Ans. The contents which I told to my officer were incorporated in one sheet paper.

This shows that P.W. 5 prepared one report and P.W. 6 also prepared one report with the help of the superior officer. But P.W. 5 would state that P.W. 6 did not prepare any report at all. P.W. 5 does not speak of the presence of P.W. 6 at the time of the preparation of the report. But P.W. 6 in answer to question 59 would state that P.W. 5 was corroborating the contents which P.W. 6 was narrating to his officer. While P.W. 5 would make us believe that there were two reports, as I noticed above, but P.W. 6 in question No. 61 would categorically state that only one report was prepared. Therefore, one has to infer that neither of them is telling the truth. P.W. 5 says that he showed the report of his senior officer at about 6 P.M. P.W. 5 would admit that he did not sign the report. P.W. 5 further admits that the speeches, referred to in the meeting, as published in Ext. R. 1, is partially correct. It was suggested to P.W. 5 that Shri Ram Chandra Paramhans did not make any speech. About Shilanyas ceremony, the witness gives the following answer.

Q. 145. Is it not a fact that this Shilanyas ceremony was attended by the then Prime Minister Shri Rajiv Gandhi and the Chief Minister of U.P.?

Ans. I do not know.

Q. 146. Is it not a fact that this information of participation of the then Prime Minister and the then Chief Minister of U.P. is contained in the records of I.B.?

Ans. It may not contain but I can not disclose it to you but I can disclose to the Hon'ble Tribunal.

About the speech of Sadhvi Rithambhra, the witness would state :

Q. 201. Please state what did Sadhvi Rithambhra speak about Mathura and Kashi liberation?

Ans. She said that slavery of Hindus of Mathura and Kashi is to be removed. This was what she meant liberation of Mathura and Kashi.

That is the understanding of P.W. 5 about the speech of Sadhvi Rithambhra but the Government has its own meaning to the alleged speech. P.W. 6 was examined on 26-4-95. He would admit that he is an Asstt. Sub Inspector of Police. He would admit that he attended the meeting with an officer of the I.B. To the questions as to how he covered the speeches of the speakers, the witness would state :

Q. 35. Would you kindly state as to by what method or media you covered the speeches of the two speakers?

Ans. I keep such rough papers with me which I, after the use of those papers by telling my officers about the contents of the speeches, can be easily destroyed?

Q. 36. How many such papers you had taken with him?

Ans. 3 or 4.

Q. 37. Where did you keep those papers?

Ans. In my side pocket of the pant.

Q. 38. Whether those papers were folded and visible to others?

Ans. The papers were folded but were not visible to others.

Q. 39. Please state whether the papers were visible when you were noting down the speeches of these two speakers on those papers?

Ans. I used to keep the folded papers in my palm and after noting down the important points of the speech I would immediately put it back in my pocket and so there was no question of the papers being visible or seen by any other person.

Q. 40. How many papers were used by you?

Ans. Perhaps three.

Q. 41. Do you know or not as to which place the other officer was occupying and taking notes of the meeting?

Ans. I am not aware of the other officer about the place which he was occupying and whether he was noting the speeches or not.

Q. 42. When did you return back to your house in Lucknow or to the office of I.B. after the meeting?

Ans. I reached the I.B. office at about 5 P.M.

This shows how P.W. 6 is trying to weave out a story. The answers to questions 52 to 56 also show how artificial the evidence is :

Q. 52. Who prepared that report?

Ans. My superior officer prepared that report.

Q. 53. Was it prepared in hand or it was prepared on a typewriter?

Ans. The report was prepared in hand. Thereafter, it was shown to me.

Q. 54. Did you read that report?

Ans. I had read that report.

Q. 55. How many pages were utilised for incorporating the report?

Ans. The contents which I told to my officer were incorporated in one sheet paper.

Q. 56. How many pages were used for preparing the report?

Ans. I was neither shown nor I was told that how many papers were used in preparing the report, which was prepared by my superior officer.

About the preparation of the affidavit, what the witness says is somewhat strange.

Q. 85. Please state did you prepare your affidavit yourself?

Ans. I prepared my affidavit with the consultation of my lawyer Mr. Madan Lokur.

Q. 86. When did you have consultation with your lawyer Mr. Madan Lokur?

Ans. I took so many days for consultation with my lawyer Mr. Madan Lokur for preparing the affidavit.

Q. 87. Whether the affidavit was prepared by you after taking consultation from Mr. Madan Lokur or Mr. Madan Lokur prepared the affidavit after consulting you.

Ans. I prepared the affidavit after consultation with my lawyer Mr. Madan Lokur.

Q. 88. Please state whether in your presence for all these days when you were having consultations with Mr. Madan Lokur, was any other officer taking consultation from Mr. Madan Lokur in preparing any affidavit?

Ans. Whenever I met Mr. Madan Lokur I did not find any other officer of I.B. with him, namely with my lawyer Mr. Madan Lokur.

Q. 89. Did you have any consultation with your that officer whom you had met in the meeting on 25th of December 1994 for preparing your affidavit?

Ans. No.

It is interesting to notice that P.W. 6 would state he did not show his affidavit to him, when they are identical, prepared on the same date and signed it on the same date in Delhi. It was suggested to P.W. 6 that he did not attend the meeting, did not take any notes nor did he report any report to so called immediate officer. I perused two files of S.I.B., Headquarters and they are of no assistance in ascertaining the truth.

64. In my opinion, evidence of P.W. 5 and P.W. 6 is not at all believable and their evidence is totally false.

65. Now I go to paragraph 7 in the notification, wherein reference is made to the alleged speech of Shri Ram Phal Singh of 6-1-1995 at Agra. The extract of the speech is given as Annexure XI (Ext. P. 11). To prove this speech P.W. 9 was examined. He was examined on 28-4-95. He would state in the affidavit that on 7-1-95 through his field enquiries he learnt that Shri Ram Phal Singh, Organising Secretary, VHP, Madhyanchal held a Press Conference on 6-1-95 at the Vishwa Hindu Parishad Office, Agra. He would admit that he is an Inspector. The following questions and answers would show how the Government had gone to the extent of procuring evidence for the purpose of the notification.

Q. 7. Did you instruct any of your personnel, i.e. your subordinate or any other officer to attend that conference dated 6-1-1995 and report to you as to what statements have been made by Shri Ram Phal Singh?

Ans. I did not instruct any of my subordinate to cover the press conference on 6-1-1995. In fact, I was not even aware if any conference was to be held on 6-1-1995.

Q. 8. Who had instructed any employee of Intelligence Bureau to attend the conference allegedly reported to your department?

Ans. It is all secret. We do whatever our seniors instruct.

Q. 9. Did you come to know on 6-1-1995 or 7-1-1995 that a press conference of Shri Ram Phal Singh was covered or attended to by some officers of the Intelligence Bureau?

Ans. : No Intelligence Bureau Officer or any other employee of the Intelligence Bureau had personally attended the press conference dated 6-1-1995?

Q. 10. Were you directed to make an inquiry about the conference dated 6-1-1995?

Ans. : Yes.

Q. 11. When were you directed?

Ans. : On the 7th morning I was directed to do so.

Q. 13. Did you meet any office bearer of the VHP to know as to what press statement had been made by Shri Ram Phal Singh in his press conference on 6-1-1995?

Ans. : I can not disclose it to you but I can disclose it to the Hon'ble Tribunal.

Q. 14. Please state whether you met any person, worker or leader of any political, social party to make any inquiry as to what statement had been made by Shri Ram Phal Singh in his press conference?

Ans. : I can not disclose it to you but I can disclose it to the Hon'ble Tribunal.

Q. 15. What do you mean by field officers?

Ans. : I contacted my informer to ascertain about the press conference and what was the main point spoken by Shri Ram Phal Singh?

When a crucial question is put to him he would answer in the usual way.

Q. 16. Can you tell me who was that person from whom you wanted to know about the statement of Shri Ram Phal?

Ans. : I can not disclose it to you but I can disclose it to the Hon'ble Tribunal.

He admits that the contact man did not give anything in writing but told him verbally. To another question the usual answer is given.

Q. 18. How many contactmen were contacted by you to know the main points and subsidiary points stated or spoken by Shri Ram Phal Singh in his press conference?

Ans. : I can not disclose it to you but I can disclose it to the Hon'ble Tribunal.

It is obvious that this witness is prepared to utter any falsehood which can be seen from this answer.

Q. 23. Did you keep a record of the notes which you jotted down on the information of your contact man on the statement of Shri Ram Phal Singh in his press conference.

Ans. : After making my report I destroyed the papers.

Q. 24. When did you make that report?

Ans. : On 7-1-1995 itself.

Q. 25. How much time you took to contact your contact man or men and in taking notes and what was the duration of your meeting with the contact man or contact men?

Ans. : Actually I do not remember. I took 15 to 20 minutes to contact the contact man on telephone and I got the report from him after one hour.

To another important question he would give an evasive answer.

Q. 27. Who told you to contact the said contact man to make inquiries?

Ans. : Nobody told me.

Q. 28. How did you come to know that you should contact the contact man for the aforesaid purpose?

Ans. : My immediate officer had told me that a news item had appeared in the newspaper that Shri Ram Phal Singh had held a press conference at Ayodhya on January 6 and asked me to make an inquiry and send the report.

Q. 29. I asked as to who told you to contact a particular contact man to make inquiry?

Ans. : Nobody told me.

Again on further probing by the learned counsel for the respondent, the witness could not give any effective answer.

Q. 31. Please state how did you come to know that the said contact man whom you contacted had attended the press conference of Shri Ram Phal Singh?

Ans. : I have several contacts. I thought that the said contact man would be in a position to make an inquiry and give me the report.

Q. 33. Do you mean to say that you did not know as to whether the contact man had attended the conference or not?

Ans. : I do not know.

Q. 34. Did you inquire from the said contact man as to whether he had attended the press conference?

Ans. : No I did not inquire.

Q. 35. Whether the said contact man told you that he had attended the press conference?

Ans. I did not ask him nor he told me about it. It is very interesting to notice what the witness has to say to a very crucial question.

Q. 36 : Whether the said contact man told you his source of information about the statement made by Shri Ram Phal Singh in his press conference.

Ans. It is a secret which I can not disclose it to you but I can disclose it to the Hon'ble Tribunal.

He gives an interesting answer to another question.

Q. 38. Did you contact any person from your department to know as to whether the press conference had been attended by any employee of the Intelligence Bureau?

Ans. : I knew that no Intelligence Bureau person attended the press conference.

The witness would admit that on 7-1-95 at about 9.35 or 9.40 his immediate officer asked him to make an enquiry. Obviously, the witness is telling a lie. To cover his falsehood he would state.

Q. 41. Please state whether you got the information given by the contact man to you confirmed or verified from any other person?

Ans. : I can not disclose it to you but I can disclose it to the Hon'ble Tribunal.

Q. 42. Please state do you mean to say or is it a fact that you have no personal knowledge of the statement made by Shri Ram Phal Singh in the said press conference?

Ans. I have no personal knowledge as to what statement Shri Ram Phal had made in the said press conference.

The precaution taken by him to verify the correctness of the statement and how indifferent and how irresponsible the witness has been, is clear from the following.

Q. 57. Did you make any inquiries as to whether the statements alleged to have been made by Shri Ram Phal Singh were correct?

Ans. My informer is reliable and, therefore, I did not make any inquiries as to the statement that had been made by Shri Ram Phal Singh was correct or not. It is very interesting to notice the following from his evidence.



Q. 61. Did you sign the report which you submitted to your immediate officer on 7-1-1995 ?

Ans. Yes.

Q. 62. Was it handwritten or typed ?

Ans. It is handwritten.

I am very clear in mind that P.W. 9 is a total liar and no credence can be given to his evidence. I perused the files relating to the alleged speech and, to my mind, all is not well with Intelligence Bureau and whole thing appears to be a made up affair.

66. I now deal with the last ground 6, mentioned in paragraph 8 of the notification and would relate to the alleged speech of Shri Ashok Singhal—a public meeting held on 11-1-1995 in Delhi. The extract of the speech is given in Annexure XII (Ext. P. 12). To prove this speech, P.W. 8 has been examined. He filed his affidavit which was treated his examination in chief. He was examined on 27-4-1995. According to him, he is a Sub-Inspector. How he came to cover the speech he would state in the following manner.

Q. 10. Were you ever directed to report the speeches of the speakers in a meeting to be held or was held on January 11 1995 ?

Ans. Yes.

Q. 11. When ?

Ans. In the evening of January, 1995, I was directed to cover up the meeting of January 11, 1995.

Q. 12. Who else was directed to cover the meeting besides you ?

Ans. Only myself.

Q. 13. When did you reach the Constitution Club, Rafi Marg, New Delhi to cover up that meeting ?

Ans. Around 15.30 or 15.40 hours.

Q. 14. Had you taken a note book and a pencil with you to cover that meeting ?

Ans. I did not take a note book and the pencil to cover up the meeting.

Q. 15. Please state what material you had taken with you to cover the meeting ?

Ans. A loose sheet and a pen.

Q. 16. What was the length and breadth of the said loose paper ?

Ans. Approximately one feet in length and three quarter a feet in width.

Q. 17. Did you fold that loose paper or kept it as it is ?

Ans. I folded it.

Q. 18 How many folds you gave to that paper.

Ans. Three folds were given to the paper.

Q. 19. Where did you keep that paper ?

Ans. In my left pocket of the pant.

One can easily appreciate the unnatural evidence given by this witness when he is asked to do an important job for the Intelligence Bureau How the witness is trying to avoid the questions would be clear from the following.

Q. 29. How many posters, hand bills etc. had been given to you by your contact during the month of January, 1995, i.e., from 1-1-1995 to 31-1-1995 ?

Ans. I can not disclose it to you but I can disclose it to the Hon'ble Tribunal.

Q. 30. Would you kindly disclose how many posters, hand bills, you received through out the year 1994.

Ans. I can not disclose it to you but I can disclose it to the Hon'ble Tribunal.

When a question is asked to him whether he had covered any meeting organised by Indraprastha Vishwa Hindu Parishad, the answer is he can not disclose to the counsel but he can disclose to the Tribunal. How did he utilise the papers and how did he cover the speech he would state :

Q. 37. When you covered the meeting on 11-1-95 how much portion of the paper was used by you to take down the notes of the speech of Shri Ashok Singhal ?

Ans. Approximately half.

Q. 38. Please state how many words approximately your notings occupied ?

Ans. I cannot recollect.

Q. 39. Please state whether you were taking notes simultaneously with the speech of Shri Ashok Singhal or you took notes after his speech was over ?

Ans. Simultaneously I was taking notes.

Q. 40. For how much time the speech of Sh. Ashok Singhal continued ?

Ans. Approximately 15 to 20 minutes.

It does not appeal to me at all that he is speaking the truth. About the paper on which he had taken notes, he would state.

Q. 46. Did you hand over that paper to your superior officer to whom you reported back ?

Ans. No.

Q. 47. How long you kept that paper with you ?

Ans. After I had prepared the report and my senior officer typed it out and signed it. Thereafter, I destroyed that paper.

According to him, he handed over his hand written report to the officer. Then the officer having prepared it, sent the report to him for

comparison and after making the comparison he did not sign the report. He would admit that he signed the report which he had originally prepared by his own hand but that is not produced and that is not found in the files also. He would admit that he did not sign the typed report. He would candidly admit the practice adopted by the Intelligence Bureau and which should have been spoken to by P.W. 10 but P.W. 10 would give a different version.

Q. 63. According to you, the names of the persons who were going to deliver speeches in Hindi were also known to your Department ?

Ans. I cannot generalise in the present instance the names were known.

By this, it shows the field officer, who attended a meeting, would prepare a report and he would sign it and report is typed out and typed report is signed by the officer and both the reports are kept in the custody of the senior or superior officer and according to this witness that is the common practice. If this procedure is followed then it will be easy for the court to ascertain the facts correctly. This witness has been put up for the purpose of this case is clear from the following.

Q. 76. When the report is given by the intelligence Officer, it is in his own hand and passed on to its superior officer by the Intelligence Officer ?

Ans. Sometimes the Field Officer gives written report, sometimes an oral report based on his own notes and sometimes the reports submitted by the Field Officer, who covered the meeting itself, is primarily sent to the Head-quarter.

In the reference, it is mentioned that Shri Ashok Singhal addressed the meeting at Rafi Marg, New Delhi. In his affidavit PW8 would state that the meeting was at the Constitution Club, Rafi Marg, New Delhi. From this the conclusion is irresistible that this witness had been instructed to speak about an event which he was not aware of for the purpose of this case. He had to admit that he had nothing to do with the speech in the following manner :

Q. 97. Now please state can you give the reason as to why you did not report to your officer and mention in your report the speech which was delivered by Shri Ashok Singhal as reflected and published in this newspaper ?

Ans. When Shri Ashok Singhal was delivering the speech I took only points that I heard and then reflected that points in my report, because I do not know shorthand and, therefore, I could not note down his whole speech.

Q. 98. Now please state did you take note of the important points or simply the points which you thought proper to include in your report?

Ans. I noted down only those points which were important and were not repeated many times by Shri Ashok Singhal.

I saw the files. The Joint Assistant Director has signed the alleged report and he has not been examined. The file does not appear, to my mind, to have come into existence in the usual course of the business of the department. Therefore, I have no hesitation to hold that P.W. 8 is not speaking the truth and he has been a puppet in the hands of interested persons.

67. What remains is the evidence of P.W. 10 and P.W. 11. P.W. 10 Mr. N. C. Padhi is stated to be Joint Director, Intelligence Bureau. I had been watching his demeanour right from the beginning to the end of his examination. I had been able to see that he had been anxious to sustain the notification and he had been trying to be true to his salt. He has projected himself an officer having immense faith in what is being done in his department, whether what is done is in accordance with law or not and whether he can commend that procedure before a court of law. P.W. 10 would also suggest that all the Field Officers are well trained and they have good memory and they do not contradict each other with reference to the matters reported by them. He would also state that the Field Officers would destroy the papers that they take to the meeting to note down the speeches because the Intelligence Bureau would like to have one track record. To ensure the correctness of what is alleged to have been recorded he would say that the records maintained by the Intelligence Bureau Office, which have not been produced, would corroborate the speeches in Question. He contradicts himself. His evidence in my view is oxymoronic and, therefore, cannot be accepted at all. I am not able to resist my impression on a consideration of the evidence of this witness that the Government for extraneous reasons had made him to give evidence to sustain the notification. In our body polity, high officials of the Government are to act to the dictates of the political bosses and in my view if the purity of the administration is to be maintained these high officers of the Department should be really independent and should be insulated from the onslaught of the political bosses and harassment, in the event of the officers not agreeing to unreasonable attitude of the political bosses. Apart from this, I do not want to comment on the evidence of this witness. His knowledge about the speeches he would state :

Q. 21. Is it a fact that you were not present in any of the meetings referred to in the notification?

Ans. It is a fact that I have not been personally present in the meetings of those statements.

Q. 22. Is it a fact that you have no personal knowledge of contents of speeches allegedly given by certain persons referred to in the notifications ?

Ans. I deny that I do not have any personal knowledge because my knowledge is based on authentic reliable and proven modes of I.B.'s record.

It really sounds odd for me that the witness should give such an answer to question No. 22. When admittedly he had not attended any of the meetings he gives a peculiar explanation to get over serious defects in the maintenance of papers by the Department saying.

Q. 26. Have your department kept the papers of the alleged points of the various speeches made by the speakers held in the alleged meetings to which they so refer to ?

Ans. The nature of our work requires that we have a very flexible approach of gathering intelligence on real time basis all over the country, round the clock, round the year. Consequently, depending on the rank of the officer, depending on the situation and depending on the nature of the report, records could not be kept or could be destroyed. The need to preserve the security by minimising record keeping generally makes us to keep only a single record of a transaction between the field and the head office and every supportive documents after the use are destroyed.

When he was asked about using electronic gadgets for recording speeches. He would give an evasive answer.

Q. 27. Would you kindly tell that in the proceedings held before Hon'ble Mr. Justice Bahri Tribunal your department had deposed that it, namely, the department records the speeches of the various speakers in offending meetings by tape recording them and also to have their audio cassettes and video Cassettes in order to have the authenticity and genuineness of speeches made by the various speakers in the meetings which had been held ?

Ans. It is fact that Intelligence Bureau depending on the gravity of the meetings, uses electronic gadgets like audio, video Cassettes and it is possible that I might have adopted this procedure before Hon'ble Justice Bahri Tribunal. I do not recollect what I had said to the earlier Hon'ble Tribunal. Having given such an answer, he tries to mop off the same by stating.

Q. 35. Mr. Padhi whether according to you there was no gravity of the speeches produced by the Government in the present case and it was on account of the fact that the speeches were not tape recorded or audio Cassettes were not prepared ?

Ans. Speeches related in the present notification were made in public places open to media and the general public and, therefore, there was no necessity felt to record the said statements through electronic means.

Q. 36. Please state whether there was any gravity of situation in respect of the meetings which were allegedly to be held and were held and were directed by the Intelligence Bureau to be covered by your officers.

Ans. The meetings were grave enough to merit a field coverage. My use of the word 'gravity' of the situation would require some clarification. When I talk about gravity I employ gravity in terms of the difficulties in collecting the information in terms of

its implication on the law and order situation in the polity.

He would give an answer that the resources of the Intelligence Bureau are limited. Therefore, electronic gadgets could not be used. He forgets that he deals with the constitutional guarantees of the citizens of this country and if he realises the responsibility of the Government he would not have given such an answer and he is not the witness to speak about the resources of the Government. The following statement of the witness would really show his anxiety to support the Government.

Q. 49. Do you mean to say that since VHP leaders were making their speeches in open public meeting and were not recording the speeches through audio Cassettes tape recording and were not circulating in toto, did your department ever thought proper to record the speeches by tape recording them or otherwise ?

Ans. The pick of particular statement by electronic means would be necessary if a statement senses incredibility. The statements of the VHP leaders were not considered for what they had been saying prior to December 9 ban, during the ban period, and subsequently since there were no differences in the tenor and tone of the speeches made from time to time. Since 1985, there was no necessity to use the electronic means because senior officers like me determine a speech to be tape recorded only when we want to understand certain nuances of a speech whether a particular speech made is not incredible.

The witness tried to be very smart and assumed that he knew everything and he could say anything before court. When Ext. R. 1 was shown to him what he would state makes an interesting reading because it has been admitted that he did not attend the meeting. He has no competence to say whether the speeches were made are correct or not. I would have expected him to say having regard to the high position he is occupying that he cannot say anything about the report but he took up the paper, gave numbers to the paragraphs of the newspaper and said almost everything to be correct.

Q. 54. Kindly see mark R. 1 and state as to whether the report given by the newspaper is correct or not ?

Ans. Paragraph No. 1 of the R. 1 is correct, Paragraph 2 of the R. 1 in respect of resolution is misreported. Paragraph No. 3 appears to be correct. Para 4 is correct. Para 5 appears to be correct. I am not in a position to comment on paragraph No. 6 that speeches to that effect were made. Paragraph No. 7 is correct. Paragraph No. 8 is incorrect to the extent that leaders made addresses to the gathering prior to

and not after the resolutions were passed. In regard to Paragraph No. 9 off hand I do not recall the speech of Mahant Avaidyanath. Para No. 10 is correct. I am aware of the speech referred to in Para No. 11. It has not been fully reported. Para No. 12 appears to be correct. Paragraph No. 13 appears to be correct. (In Annexure R. 1 paragraph numbers are given by the witness). Therefore, I am not able to appreciate the attitude of this witness. He also would admit all the speeches were made in Hindi and Hindi Stenographers are not used in the field. Again, the answer given by the witness to another question makes me feel that he is over anxious and over enthusiastic.

Q. 75. Whenever a report is made by your Intelligence Officer it is made in the same language of different language spoken by the speaker ?

Ans. Where a word is important then both its linguistic usage as well as the English translation is given.

Q. 76. When the report is given by the Intelligence Officer, it is in his own hand and passed on to its superior officer by the Intelligence Officer ?

Ans. Sometimes the Field Officer gives written report, sometimes an oral report based on his own notes and sometimes the reports submitted by the Field Officer, who covered the meeting itself, is primarily sent to the Headquarter.

Q. 77. Whenever the report is recorded, whether in substance or whether in detail that report is given by the Intelligence Officer to its superior officer as made by him ?

Ans. The officer takes notes of what he has heard. The full report is prepared to the extent possible in the language of the officer who covered the meeting.

Q. 78. Are you saying that the person concerned, who goes to the venue of meeting, prepares a note in his own hand and the contents are given in the report to his taste and same is passed on by him to the superior officer ?

Ans. It is ensured by our Department that our Officers professionally trained through constant Training Programme to maintain the highest degrees of objectivity possible.

Q. 79 Is it your case that the officer records the points of speeches according to his own understanding, that is, that such portions are necessary and such portions are not necessary to be noted down ?

Ans. I have with me a collection of statements which shows that in the manner of our coverage of speeches the contents what would be reported from a speech would not vary between two officers to the extent to which it would in the case of an untrained man.

Q. 80. Please state as to whether the reports, which are prepared by the Field Officers, are verified as to be correct or not by your superior officers to whom they are submitted ?

Ans. In a instance like a VHP, whose speeches and activities are constantly in media and whose position and various issues are well known, there is a regular corroboration of what our field reports state and should there be any variance at all levels upto the highest level in the Government there would be queries if our report from the field in variance that of the VHP leader had said elsewhere in the country so our reports are constantly corroborated and confirmed by a plethora inputs into the reporting. The type of corroboration being suggested would be necessary in respect of the intelligence report about Organisation and leaders who are underground or hiding from the law or are not available to the media for giving press statement. In such events, we would require more than one source of information to confirm the news of that leader.

How he is trying to give a colour of verisimilitude to the false evidence given by the other witnesses is clear from the following.

Q. 81. Please state as to whether in the present case any report submitted by your field officers had been corroborated by any inputs of the plethora, as stated by you ?

Ans. We have several other statements which would corroborate their statements shown in the Notification.

Q. 82. Please point out which are those statements which corroborate the reports given by the Field Officers in this case.

Ans. All the statements in the notification are in consonance and stand corroborated by the similar statements, which are in our knowledge.

Q. 83. Which are those similar statements and disclose what are those similar statements which corroborate the field reports in the present case ?

Ans. I have more than 20-25 such statements which I will have to glean out of my records available in the office. However, I am willing to give a chart of such statements where the name of the speakers, the place of the speeches and the date on which such speeches were made can be submitted both to the Hon'ble Tribunal and the counsel.

Q. 84. Can you give the so called similar statements to us and to the Hon'ble Tribunal which had corroborated or which corroborates the reports in this present case and not the chart prepared by you of your own ?

Ans. I have with me a collection of statements which have been made by various VHP leaders all over the country since 10th

December, 1992. I can make those statements available to the respondent provided I am only asked to reveal the names of the persons who made the statement, the place where he made and the date on which he made it.

The witness also made an attempt to support the records maintained by the Department with reference to the speeches. What he has stated in the evidence is not correct and the records are not reflecting the correct state of affairs.

Q. 87. Kindly tell as to whether there is any other material with you to show that the alleged field reports filed before the Hon'ble Tribunal have been filed prior to the issuance of the impugned Notification and reflect and contain correctly the extracts of the speeches, alleged to have been made by the various speakers mentioned in the Notification?

Ans. A perusal of my records would show that these reports were transmitted through the electronic net work which automatically records the date on which such transmissions are made. The reports were also submitted to the various functionaries of the Government by the Intelligence Bureau and these functionaries have also on occasions initialled those reports and returned it to the Intelligence Bureau well before the Notification was even contemplated.

Q. 88. I suggest to you that they were not communicated through Fax or other electronic media to various functionaries prior to the imposition of impugned ban, as suggested by you above?

Ans. I have received the report from the field through my electronic network but within a day or two these reports have also been submitted to various functionaries in the Government. These reports have been sent through our normal dak channels and all these reports would show that they contained a date well prior to the notification.

He would state that for the receipt of messages, a register was maintained and the registers were produced before me and the impression I gathered is that the registers do not at all lend any support to the theory propounded by this witness and those documents/charts were not shown to the other side. They were not subject to the examination by the other side.

C8. About the availability of records to the Home Ministry, P.W. 10 would state :

Q. 91. When did your Department make available the reports to the Ministry of Home Affairs? Kindly give the date.

Ans. The reports were made available to the Government at the time when they were made, whether it was in the year 1993, 1994 or 1995.

P.W. 11 (Joint Secretary) would contradict him by saying :

Q. 11. Is it that the U.Os, which you receive from time to time were not the copies of the field reports but were extracts or information given to you about the events?

Ans. U.Os are mainly informatory.

The following would make anybody comes to the conclusion that the witness (P.W. 10) is rattling.

Q. 92. Do you mean to say that so far as your Department is concerned no reports were sent or submitted to the Government prior to 9th of January, 1995 and that the Government, namely Ministry of Home Affairs took a decision or the Government took a decision that the ban should be imposed or not on the respondent?

Ans. Prior to the issuance of the Notification as part of its scrutiny procedure, the concerned officers of the Government ask for and were given copies of the field reports in its original shape.

Q. 93. Is it your case that the Ministry of Home Affairs did not have the xerox copies or copies taken through any other media in its possession prior to the imposition of ban?

Ans. It is my case that the Home Ministry did not have all material prior to the issuance of the Notification.

Q. 94. I put it to you again as to whether the Ministry of Home Affairs had in its possession or not the xerox copies of the record?

Ans. The Ministry of Home Affairs had in possession the Intelligence Bureau report sent at the time when the speeches were made as also copies of the field report on the basis of which the Intelligence Bureau report was made prior to the issuance of the Notification.

Q. 95. Can you give the reason as to when the Ministry of Home Affairs had the reports in its possession, what was the necessity for asking your Department to give xerox copies of those reports?

Ans. Senior officers in the Ministry of Home Affairs must have done it as a matter of abundant precaution.

About the communication to the Home Ministry for the xerox copies of the reports, P.W. 10 would state :

Q. 127. Would you kindly state as to on what date and the month you were required by the Ministry of Home Affairs to submit the xerox copies of the reports filed herein?

Ans. I do not recall the exact dates but it could be in the last week of December or the first week of January.

Q. 128. Was this request made in writing by Ministry of Home Affairs to send xerox copies of the reports ?

Ans. There was some exchange of letters between the Ministry.

Q. 129. Whether any official request made on telephone or in writing subsequent to correspondence in any writing ?

Ans. There was some exchange of letters between the Ministry.

Q. 130. Whether any correspondence is in your possession ?

Ans. Yes. It is in my office.

68. I am of the view that the evidence of P.W. 10 does not advance the case of the Government in any manner.

69. P.W. 11 was examined by the Government who is a Joint Secretary to the Government of India, Ministry of Home Affairs. On a reading of the evidence I get the impression that he has made every effort to sustain the notification. About how the notification and how the field reports were selected, the witness would state.

Q. 38. Would you kindly state as to who had prepared these extracts from the field reports ?

Ans. These were prepared in my office.

Q. 39. Who directed your office, i.e., whether you or some other official asked for preparing the extracts from the photo-copies of the field reports which you had received from the I. B. ?

Ans. I directed.

Q. 40. Is it that your office took out some extracts from the photo-copies of the field reports of their own or you directed them to take out particular extracts, i.e., portions of the photo-copies of the field reports dated 25-6-1993 ?

Ans. I went through the reports and then asked them to take out the portions.

Q. 41. Please state when the extracts were culled out by your office whether those extracts were placed before you or not by your office ?

Ans. These extracts were taken out under my directions. I had seen them and these are those very extracts which were culled out at my directions.

Q. 42. Would you kindly tell me who had selected that such and such reports photo-copies of which were sent to you to take out extracts out of them ?

Ans. A preliminary selection was done by us. I was assisted by my officers and then we had a lot of discussion and after that it

was decided to put them before the decision making authority, namely, the Home Secretary.

Q. 43. Would you kindly tell how much time it took all of you to sort out the field reports copies of which had been received by your department ?

Ans. It took a couple of days.

He would admit that an exercise was made in selecting the extracts of the speeches. This is revealing. Whether any action was taken by the Government—when according to the Government the speeches would cause disharmony and illfeeling, the witness would state.

Q.52. When you were receiving the I.B. reports about the different forums which are used by ex-members of banned VHP did you take any action against those members or the group of persons or persons who were using such forums or not particularly when you concluded that these forums were used by the ex-members of the banned organisations of the VHP?

Ans. : We were advising the State Governments informing them and requesting them that action should be taken because action has to be taken by the State Governments.

Q.53. Did you ever write to them?

Ans : Yes. A number of letters were written at various levels to the State Governments to take action against those persons of the banned organisations on their continuing activities by those forums in different ways. These letters were written in 1993 and 1994 but the exact contents of the letters I cannot say because letters are not before me but what I can say with certainty is that letters were written at various levels requesting the State Governments to take action against the persons who were continuing activities.

Q.54. Do you mean to say that you recommended action to be taken against the ex-members or against the forums?

Ans. : When we were writing to the State Governments we pointed out general activities which were taking place and we advised them to consider taking action.

70. The State Governments are governments duly constituted under the Constitution. So we only bring it to their notice and leave it to them to spell out the nature of action to be taken because the action has to be taken by the State Governments.

Q.54. Did you receive any response to such letter sent by you at different levels to different States?

Ans. : In most of the cases the response came in the form of acknowledgements of our letter, and assurances that action will be taken. But we did not hear anything further than that.

Q.55. Did you make any inquiry from the different States as to whether any action had been taken or not, pursuant to your letters written earlier to that to take action?

Ans. : We have been requesting them to send periodical reports but again we found it that they are not coming from all the States regularly.

Q.56. I put to you again as to whether you asked the different States as to whether action had been taken or not as was recommended by you in your prior letters.

Ans. : Several letters were written at different levels bringing to the notice of the State Governments about the desirability of the action to be taken. But I have already stated that when we write the letters to the State Governments we bring it to the notice of the State Governments the problem in general terms. We do not write them to take action against 'X or Y'.

It is significant to notice that no document has been produced to substantiate this. What the witness would state is really interesting.

Q.57. Whether you inquired subsequently from the States as to whether or not any action has been taken or not against whom they thought proper?

Ans. : We have been requesting them to send periodical reports. Some State Governments have been sending but they are more in the nature of statistical returns.

He would admit no action was taken by anybody with reference to any of the speeches found in the notification. The evidence of this witness is not of any assistance to the Government.

71. While analysing the evidence of these witnesses, I have kept in mind certain well settled principles relating to the appreciation of evidence. It is well settled that judicial belief must be founded on reasonable grounds and rest upon evidence on reasonable inferences therefrom. Section 3 of the Evidence Act is an interpretation clause as per the marginal note. That section defines a few words which would be a fair guidance for the Court in the analyse of the evidence.

"Not proved."—A fact is said not to be proved when it is neither proved nor disproved."

"Proved".—A fact is said to be proved when, after considering the matter before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought' under the circumstances of the particular case, to act upon the supposition that it exists.

"Disproved".—A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

"Not proved" .—A fact is said not to be proved when it is neither proved nor disproved."

There are two things which must never be lost sight off when weighing testimony of any kind. (1) The consistency of different parts of narration: (2) The possibility or probability, the impossibility or probability of the matters related who afford a sort of corroborative or counter evidence of these matters. Probability means the appearance of truth or likelihood of being realised which in statement or even bars in the light of present evidence. The Supreme Court in *State of U.P. vs. Krishan Gopal and another*, AIR 1988 Supreme Court 2154 had observed the forensic probability must, in the last analysis, rest on a robust common sense and, ultimately, on the trained intuitions of the Judge.—As per the provisions of the unlawful Activities (Prevention) Act, under section 4 the burden is on the Government to prove the acts on which the declaration have been made. The Parliament had introduced such a Section on the basis of Section 101 of the Evidence Act. It is said that that Section in the evidence Act is based on the rule i.e. **INCUMBAT PROBATIO QUI DICIT, NOW QUID NEGAT**—The burden of proof of a fact rests on the party who substantially asserts the averment of the issue and not upon the party who denies it, for a negative is usually incapable of proof. In *R. Ramasrinivasan vs. P. Shanmugham*, AIR 1969 Madras 378, the Division Bench of the Madras High Court had rejected the evidence of a person who did not have direct knowledge.—I drew the attention of Mr. P.P. Malhotra, Senior Advocate to this decision. The answer by him was that there was basic difference between functioning of Police and the Intelligence Bureau. In *Bhugdomal Gangaram and others etc. vs. The State of Gujarat*, AIR 1983 Supreme Court 906, the Supreme Court refused to believe the evidence of Deputy Superintendent of Police, who gave evidence on the basis of information received from an informant on the ground that the informant was not examined. Therefore, if proof of a fact would depend upon the version



of two individuals, both of them should be examined. That was why I asked the learned senior counsel for the Government, whether the Government was examining the officers who had signed, what is called the officers who has signed the field reports. The learned senior counsel replied by stating that Government did not propose to examine those officers. The version of the witnesses including P.W. 10 that the person who gives actual report does not sign the report is not at all acceptable. The Supreme Court in *Chaturbhuj Panda and Others vs. The Collector Raigarh*, AIR 1969 Supreme Court 255 had observed that,

“The Judges are not computers. In assessing the value to be attached to oral evidence, they are bound to call into aid their experience of life.”

In my own humble way, I tried to analyse the evidence of all these witnesses and I have no hesitation in coming to conclusion that the Government has not at all proved that the speeches, mentioned in the notification in paragraphs 4 to 8, were made by the individuals, mentioned therein, and, therefore, there was no material available to the Government to make the declaration and, therefore, I am bound to cancel the notification and the said notification stands cancelled.

72. No further question would arise for consideration in the light of the view taken by me above. But the learned counsel argued that assuming that the speeches were made by the individuals, they are likely to promote ill feeling and the Court should consider the words used in these speeches and the Government need not prove any actual incidents or occurrences. The learned senior counsel for the Government relied on the decision in *Sh. Babu Rao Patel vs. The State*, 1973 Rajdhani Law Reporter, 637, a judgment of this court and *Babu Rao Patel vs. The State (Delhi Administration)*, AIR 1980 Supreme Court 763, which affirmed the decision of this Court. Mr. P. P. Malhotra, learned senior counsel referring to the decision of the Supreme Court in *Municipal Corporation of the City of Ahmedabad and others vs. Jan Mohammed Usmanbhai and another*, (1986) 3 Supreme Court Cases 20, maintenance of communal harmony is the basic structure of the Constitution and it is the duty of the Government to maintain the same.

73. Mr. L. R. Gupta, learned senior counsel for the VHP contended that what is to be proved is that the speech was the cause for tension or violence in the society and the action should have been taken by the Government against those speakers and if such speeches were repeated and there was the recurrence of violence then and then only the Government could think of banning any organisation. The learned senior

Counsel drew my attention to Section 123 (3A) of the Representation of the Peoples Act, 1951, Section 153A and 153B of the Indian Penal Code and contended that the provisions are similar in nature and they were subject matter of consideration by the Courts and those considerations would be relevant to consider the instant case in the context of Section 2g (ii) of Act, 1967. He referred to and relied on the following cases :—

1. Kali Charan Sharma Vs. Emperor, AIR 1927 All. 649.
2. Emperor Vs. Banomali Maharana, AIR 1943 Patna 382.
3. Devi Soren and others Vs. The State AIR 1954 Patna 254.
4. Hemendra Prasad Ghose and another Vs. King Emperor. AIR 1927 Calcutta 215.
5. Gopal Vinayak Godse Vs. The Union of India and others. AIR 1971 Bom 56.
6. Satya Ranjan Bakshi Vs. Emperor, AIR 1929 Cal. 309.
7. The State of Bihar Vs. Ghulam Sarwar and another AIR 1965 Patna 393.
8. Masalti and others Vs. The State of Uttar Pradesh, AIR 1965 SC 202.
9. Joseph Bain D'souza and another Vs. The State of Maharashtra and others. 1995 CrL. L. J. 1316.
10. Balwant Singh and Another Vs. State of Punjab 1995 (3) Supreme Court Cases 214.

I do not want to go into this question as it does not arise for consideration.

74. Mr. P. P. Malhotra, learned counsel contended that while the Government has examined so many witnesses to prove the speeches, mentioned in the notification, the respondent has not chosen to examine any of those speakers and the respondent has withheld the best evidence from Court and, therefore, adverse inference should be drawn against the respondent. He referred to the following cases:—

1. S. Gurbaksh Singh Vs. Gurdial Singh and another, AIR 1927 PC 230.
2. Rameshwar Singh and another Vs. Bajit Lal Pathak and others, AIR 1929 PC 95.
3. Kirpa Singh Vs. Ajaipal Singh and others. AIR 1930 Lahore 1.
4. Puran Das Chela Vs. Kartar Singh and others. AIR 1934 Lahore 398.

5. Gopal Krishanji Ketkar Vs. Mohamed Haji Latif and others, AIR 1968. Supreme Court 1413.
6. Patel Naranbhai Marghabhai and others Vs. Deceased Dhulabhai Galbabbhai and others. AIR 1992 Supreme Court 2009.

The ratio-decidenti in these cases would not apply to the facts of this case and, therefore, there is no need to consider those cases in detail.

75. Mr. P. P. Malhotra, learned senior counsel claim privilege on behalf of the Government. In support of the claim, an affidavit is filed of the Home Secretary. The affidavit is in the following terms:-

"2. Alongwith the Reference under Section 4 (1) of the Unlawful Activities (Prevention) Act, 1967, relevant extracts of intelligence reports have been annexed. These are as follows:--

- (i) Report dated 25-6-1993-Annexure IV.
- (ii) Report dated 9-9-1993 Annexure V.
- (iii) Report dated 15-9-1993-Annexure VI.
- (iv) Report dated 17-9-1994-Annexure VII.
- (v) Report dated 27-10-1994-Annexure VIII.
- (vi) Report dated 5-12-1994 Annexure IX.
- (vii) Report dated 25-12-1994-Annexure X.
- (viii) Report dated 7-1-1995-Annexure XI.
- (ix) Report dated 12-1-1995-Annexure XII.

3. I have carefully read and considered the contents of each of the above mentioned Reports in full and I am fully aware of the manner of working of Intelligence Bureau, the methods of obtaining information and submission of reports etc. I have come to the conclusion that:

- (i) these Reports are unpublished official records relating to the affairs of State and they contain communications made in strict and absolute official confidence.
- (ii) the full and complete disclosure of these Reports would cause injury to public interest and because of the actual content and class of documents, they should not be disclosed.
- (iii) publication of the Reports would expose the the sources/contacts of the Intelligence Bureau which would cause injury to public interest and public interest would suffer thereby.

4. I have carefully examined and considered the question whether the disclosure of the Reports and the sources who gave these Reports would cause injury to public interest. I am bona fide satisfied that except for the relevant extract already supplied to the Vishwa Hindu Parishad alongwith the Reference under Section 4 (1) of the Unlawful

Activities (Prevention) Act, 1967, and published in the notification dated 14-1-1995 placed before this Tribunal, other contents of these Reports and the sources who gave these Reports cannot be made public and their disclosure will be detrimental to the public interest and security of the State. Disclosure of other parts of Reports and their sources will disclose or give an indication to whomsoever may read or know them an idea as to how the Intelligence Bureau functions. It will affect the entire working of the organisation in future. Union of India, therefore, claims privilege against disclosure of manner and sources of information, full documents and records in its possession from which extracts have been produced to the VHP in public interest. However, Union of India has no objection to the disclosure of manner and sources of information, the documents and records from which extracts have been produced to the Hon'ble Tribunal only for perusal by this Hon'ble Tribunal for satisfying itself about the bonafides and genuineness of the plea of the privilege. The Hon'ble Tribunal may also consider the said documents for forming its opinion on the points, in controversy and assessing for itself the credibility of the material relating to it in the light of the judgment of the Hon'ble Supreme Court in the matter of Jamat-E-Islami Hind Vs. Union of India (1995) 1 S. C. 428.

5. No inspection or copies of these documents and records can be given to any one and it is submitted that orders may be passed accordingly."

I am not able to appreciate the claim of privilege by the Government. Section 3 (2) proviso empowers the Government not to disclose facts which he considers to be against the public interest to be disclosed. Section 123 of the Evidence Act reads as follows:—

"123. Evidence as to affairs of State.—No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit."

What is claimed in the affidavit is referring to answers to questions 5 to 12 that full and complete disclosure of these reports would cause injury to public interest and publication of the reports would expose the sources, contacts of the Intelligence Bureau which would cause injury to the public interest. I am not able to appreciate the claim because the burden is on the Government to prove the grounds mentioned in the notification. Can the Government say

that the Tribunal should be satisfied with the grounds mentioned in the notification and should not ask for any further particulars in proof thereof and the respondent cannot also be permitted to have perusal of the relevant records. In other words, Government says that in support of the notification, whatever material the Government wants to produce, would produce and the Tribunal should try to consider the matter on the materials produced and the assertion made by the Government that it is in public interest to withhold documents mentioned by it should be accepted as final and conclusive. To my mind, it is against all canons of jurisprudence. If the Government chooses to impose a ban on any organisation it should be prepared to produce all the material and no question of privilege would arise and I fail to see how question of public interest would come in as this like this. P. W. 10 Mr. N. C. Padhi had said in his evidence that these are all the materials that was produced by the Intelligence Bureau and the procedure followed by the Intelligence Bureau cannot be said to be wrong. In other words, what is emphasised is all that has been done by the Intelligence Bureau the Court has to accept it to be correct and must be satisfied. I am reminded of the statement of Sydney Harris "Once we assuage our conscience by calling something necessary evil it begins to look more and more necessary and less and less evil." Therefore, having regard to the Fundamental Rights of the citizens of this country, the Intelligence Bureau, as a wing of the Government, it is obliged to protect the right of a citizen and must change its procedure conforming to and obeying the mandate of the Constitution.

76. Whatever may the position in law, I proceeded to deal with the matter accepting, *prima facie*, the stand of the Government and permitted the Government not to disclose the source, and the original field reports and even withholding the names of the witnesses. But in spite of all these things, the Government has not been able to bring out any material from which I can extrapolate or estimate the correctness of what is stated in the notification and the resume. In a democratic set up like ours when Government seeks to interdict according to it in public interest, the basic rights guaranteed in the constitution, the Government cannot take umbrage under the so-called privilege and force the Tribunal to a cul-de-sac as it were. The learned senior counsel Mr. Malhotra relied on the following cases:—

1. S.P. Gupta & others Vs. President of India and others, AIR 1982 Supreme Court 149.
2. M/s. Doyapack Systems Pvt. Ltd. Vs. Union of India, AIR 1988 Supreme Court 782.
3. State of Bihar etc. etc. Vs. Kripalu Kripalu Shankar etc. etc. AIR 1987 Supreme Court 1554.

4. Kartar Singh Vs. State of Punjab, (1994) Supreme Court Cases 569.

5. R.K. Jain Vs. Union of India and others, AIR 1993 Supreme Court 1769.

In all these cases the Supreme Court has laid down the parameters and if we apply the parameters to the instant case, the claim of privilege by the Government would fall to the ground but as I noticed above the question has become academic and I do not want to further dilate on this aspect.

77. Mr L.R. Gupta, learned senior counsel contended that the notification had been issued on extraneous considerations curbing the freedom of speech of the respondent Organisation and the notification is vitiated on that ground. On perusal of the evidence of P.W. 10 and P.W. 11 and the relevant files produced by the Government and the evidence of P.W. 9 and other witnesses, the submission of the learned senior counsel has got full force. The notification has been issued, in my view, for collateral purposes and not for the purpose of maintaining peace and tranquility in the society. The Government has taken into matters which it ought not have taken into consideration and it is well settled judicial review is for the purpose of seeing the manner of taking the decisions and judicial review is the balance wheel of administrative law. Brandeis, J. in *St. Joseph Stock Yards Company vs. United States of America and the Secretary of Agriculture*, 1935 (298) U.S. 38 had observed the supremacy of law demands that shall be an opportunity to have some Court decide whether an erroneous rule of law was applied and whether the proceedings in which facts were adjudicated were conducted regularly. To that extent, the person asserting a right, whatever its source should be entitled to the independent judgment of a court on the ultimate question of constitutionality. In 1986(4) SCC 148 the Supreme Court struck down an order of compulsory retirement when there was no justification on the materials found for the compulsory retirement of the public servant in public interest. In *Suraj Pal Sahu vs. State of Maharashtra and others* (1986) 4 Supreme Court Cases 378, the Supreme Court dealing with the preventive detention case had been pleased to observe "An order is mala fide when there is malice in law although there is no malice in fact." What the Supreme Court has observed would be relevant here. In that case the Supreme Court had said the law of preventive detention was not to be used merely to clip the wings of the accused, who was involved in a criminal prosecution. Similarly, the Unlawful Activities (Prevention) Act cannot be called in aid by the Government to clip the wings of the respondent. In *Express Papers Pvt. Ltd., and others vs Union of India and others*. (1986) 1 Supreme Court Cases

133, at page 223 the Supreme Court was pleased to observe:

“The Court in *Pratap Singh* case observed that the Constitution enshrines and guarantees the rule of law and the power of the High Courts under Article 226 (which is equally true of Article 32) is designed to ensure that each and every authority in the State, including the Government, acts bona fide and within the limits of its powers and that when a court is satisfied that there is an abuse or misuse of power and its jurisdiction is invoked, it is incumbent on the court to afford justice to the individual. The Court further observed that in such an event the fact that the authority concerned denies the charge of mala fide, or asserts the absence of oblique motives, or of its having taken into consideration improper or irrelevant matter, does not preclude the Court from inquiring into the truth of the allegations made against the authority and affording appropriate relief to the party aggrieved by such illegality or abuse of power in the event of the allegations being made out.”

At page 218, the Supreme Court had observed mala fides on the part of the Government in power or its functionaries would be sufficient to invalidate the impugned notices. Fraud on power vitiates the impugned orders if they are not exercised bona fide for the purposes for which the power was conferred. The relevant portion is as under :—

“117. Professor de Smith in his monumental work the *Judicial Review of Administrative Action*, fourth edition at pp. 335-36 says in his own terse language:

The concept of bad faith eludes precise definition, but in relation to the exercise of statutory powers it may be said to comprise dishonesty (or fraud) and malice. A power is exercised fraudulently if its repository intends to achieve an object other than that for which he believes the power to have been conferred ..... power is exercised maliciously if its repository is motivated by personal animosity towards those who are directly affected by its exercise.

He then goes on to observe:

If the court concludes that the discretionary power has been used for an unauthorized purpose it is generally immaterial whether its repository was acting in good or bad faith.

But there will undoubtedly remain areas of administration where the subject-matter of the power and the evident width of the discretion reposed in the decision-maker render its exercise almost wholly beyond the reach of judicial review. In these cases the courts have still asserted jurisdiction to determine whether the authority has endeavoured to act in good faith in accordance with the prescribed purposes. In most instances the reservation for the case of bad faith is hardly more than formality. But when it can be established, the courts will be prepared to set aside a judgment or order procured or made fraudulently despite the existence of a generally worked formula purporting to exclude judicial review.

Bad faith is here understood by the learned author to mean intentional usurpation of power motivated by considerations that are incompatible with the discharge of public responsibility. In requiring statutory powers to be exercised reasonably, in good faith, and on correct grounds, the courts are still working within the bounds of the familiar principle of *ultra vires*. The court assumes that Parliament cannot have intended to authorize unreasonable action which is therefore *ultra vires* and void. This is the express basis of the reasoning in many well-known cases, on the subject. A necessary corollary is that, as usual throughout administrative law, we are concerned only with acts of legal power i.e. acts which, if valid, themselves produce legal consequence.

118. In general, however, the courts adhere firmly to the wide meaning of ‘jurisdiction’ since this is the sheet-anchor of their power to correct abuses. They appear to be willing to stretch the doctrine of *ultra vires* to cover virtually all situations where statutory power is exercised contrary to some legal principles. There are many cases in which a public authority is held to have acted for improper motives or irrelevant considerations, or have failed to take account of relevant considerations, so that its action is *ultra vires* and void: H.W.R. Wade’s *Administrative Law*, fifth edition, at pp. 42, 348 and 369. The learned author aptly sums up situations in which error of jurisdiction may arise, at p. 42.

Lack of jurisdiction may arise in many ways. There may be an absence of those formalities or things which are conditions precedent to the tribunal having any jurisdiction to

embark on an inquiry. Or the tribunal may at the end make an order that it has no jurisdiction to make. Or in the intervening stage, while engaged on a proper inquiry, the tribunal may depart from the rules of natural justice; or it may ask itself the wrong questions; or it may take into account matters which it was not directed to take into account. Thereby it would step outside its jurisdiction. It would turn its inquiry into some thing not directed by Parliament and fail to make the inquiry which Parliament did direct. Any of these things would cause its purported decision to be a nullity.

119. Fraud on power voids the order if it is not exercised bona fide for the end design.

There is a distinction between exercise of power in good faith and misuse in bad faith. The former arises when an authority misuses its power in breach of law, say, by taking into account bona fide, and with best of intentions, some extraneous matters or by ignoring relevant matters. That would render the impugned act or order ultra vires. It would be a case of fraud on powers. The misuse in bad faith arises when the power is exercised for an improper motive, say, to satisfy a private or personal grudge or for wreaking vengeance of a Minister as in *S. Pratap Singh v. State of Punjab*. A power is exercised maliciously if its repository is motivated by personal animosity towards those who are directly affected by its exercise. Use of a power for an 'alien' purpose other than the one for which the power is conferred is mala fide use of that power. Same is the position when an order is made for a purpose other than that which finds place in the order. The ulterior or alien purpose clearly speaks of the misuse of the power and it was observed as early as in 1904 by Lord Lindley in *General Assembly of Free Church of Scotland v. Overtown*, "that there is a condition implied in this as well as in other instruments which create powers, namely, that the powers shall be used bona fide for the purpose for which they are conferred." It was said by Warrington, C.J. in *Short v. Poole Corpn.* that:

No public body can be regarded as having statutory authority to act in bad faith or from corrupt motives, and any action purporting to be of that body, but proved to be com-

mitted in bad faith or from corrupt motives, would certainly be held to be inoperative.

In *Lazarus Estates Ltd. v. Beasley*, Lord Denning, L.J. said;

No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything.

See also, in *Lazarus* case at p. 722 per Lord Parker, C.J.:

'Fraud' vitiates all transactions known to the law of however high a degree of solemnity.

All these three English decisions have been cited with approval by this Court in *Pratap Singh* case.

120. In *Ram Manohar Lohia v. State of Bihar*, it was laid down that the courts had always acted to restrain a misuse of statutory power and more readily when improper motives underlie it. Exercise of power for collateral purpose has similarly been held to be a sufficient reason to strike down the action. In *State of Punjab v. Ramjilal* it was held that it was not necessary that any named officer was responsible for the act where the validity of action taken by a Government was challenged as mala fide as it may not be known to a private person as to what matters were considered and placed before the final authority and who had acted on behalf of the Government in passing the order. This does not mean that vague allegations of mala fide are enough to dislodge the burden resting on the person who makes the same though what is required in this connection is not a proof to the hilt as held in *Barium Chemicals Ltd. v. Company Law Board*, the abuse of authority must appear to be reasonably probable."

78. In *Ram Ekbal Sharma vs. State of Bihar* and another, (1990) 3 Supreme Court Cases 504 regarding the exercise of power, Supreme Court observed:

"In *Baldev Raj Chadha v. Union of India*, it was held that (SCC headnote):

"The whole purpose of Fundamental Rule 56(j) is to weed out the worthless without the punitive extremes covered by Article 311 of the Constitution. But under the guise of 'public interest' if unlimited discretion is regarded acceptable for making an order of

premature retirement, it will be the surest menace to public interest and must fail for unreasonableness, arbitrariness and disguised dismissal. The exercise of power must be bona fide and promote public interest.

The Supreme Court ultimately held that the impugned orders in the case had not been made bona fide but for collateral purposes.

79. In *Mahabir Auto Stores and others vs. Indian Oil Corporation and others*, (1990) 3 Supreme Court Cases 752 at page 760 the Supreme Court observed:

"The existence of the power of judicial review however depends upon the nature and right involved in the facts and circumstances of the particular case. It is well settled that there can be 'malice in law'. Existence of such 'malice in law' is a part of the critical apparatus of a particular action in administrative law. Indeed 'malice in law' is part of the dimension of the rule of relevance and reason as well as the rule of fair play in action."

80. In *State of U. P. and others vs. Maharaja Dharmender Prasad Singh etc.*, J. T. 1989 (1) S. C. 118, the Supreme Court posited:

"Judicial review is directed, not against the decision, but is confined to the examination of the decision making process. In *Chief Constable of the North Wales Police v. Evans* (1982) 1 WLR 1155 refers to the merits-legality distinction in judicial review. Lord Hailsham said:

"The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorised by law to decide for itself a conclusion which is correct in the eyes of the court."

".....Judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made....."

And held that it would be an error to think:

".....that the court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself".

When the issue raised in judicial review is whether a decision is vitiated by taking into account irrelevant, or neglecting to take into account

of relevant, factors or is so manifestly unreasonable that no reasonable authority, entrusted with the power in question could reasonably have made such a decision, the judicial review of the decision making process includes examination, as a matter of law, of the relevance of the factors."

81. In *Mahesh Chandra vs. Regional Manager, U. P. Financial Corporation and others*, J. T. 1992 (2) S. C. 326 observed at page 335:

"The law consists of body and soul. The letter of the law is the body and the sense and reason of its is the soul, *quia ratio legis est anima legis*. In other words, like a nut the letter of the law represents the shell and sense and the purpose of its Kernel. The law intends to serve the purpose. Justice is both the cause and effect, the origin and the legitimate end of law. One will receive no benefit from the law, if the ratio and the letter of law defeats its purpose."

Every wide power, the exercise of which has far reaching repercussion, has inherent limitation on it. It should be exercised to effectuate the purpose of the Act. In legislations enacted for general benefit and common good the responsibility is far graver. It demands purposeful approach. The exercise of discretion should be objective. Test of reasonableness is more strict. The public functionaries should be duty conscious rather than power charged. Its actions and decisions which touch the common man have to be tested on the touchstone of fairness and justice. That which is not fair and just is unreasonable. And what is unreasonable is arbitrary. An arbitrary action is *ultra vires*. It does not become bona fide and in good faith merely because no personal gain or benefit to the person exercising discretion should be established. An action is mala fide if it is contrary to the purpose for which it was authorised to be exercised. Dishonestly in discharge of duty vitiates the action without any thing more. An action is bad even without proof of motive of dishonesty, if the authority is found to have acted contrary to reason.

82. In *M/s. Shri Sitaram Sugar Co. Ltd. and another vs. Union of India and others*, AIR 1990 Supreme Court 1277 at page 1296 the Supreme Court

has reviewed the entire case law on the point and had laid down the Laws and it runs as follows :—

“The doctrine of judicial review implies that the repository of power acts within the bounds of the power delegated and he does not abuse his power. He must act reasonably and in good faith. It is not only sufficient that an instrument is intra vires the parent Act, but it must also be consistent with the constitutional principles : *Maneka Gandhi v. Union of India* (1978) 1 SCC 248, 314-315 : (AIR 1978 SC 597, 646-647).

Where a question of law is at issue, the Court may determine the rightness of the impugned decision on its own independent judgment. If the decision of the authority does not agree with that which the Court considers to be the right one, the finding of law by the authority is liable to be upset. Where it is a finding of fact, the Court examines only the reasonableness of the finding. When that finding is found to be rational and reasonably based on evidence, in the sense that all relevant material has been taken into account and no irrelevant material has influenced the decision, and the decision is one which any reasonably minded person, acting on such evidence, would have come to, then judicial review is exhausted even though the finding may not necessarily be what the Court would have come to as a trier of fact. Whether an order is characterised as legislative or administrative of quasi-judicial or, whether it is a determination of law or fact, the judgment of the expert body, entrusted with power, is generally treated as final and the judicial function is exhausted when it is found to have “warrant in the record” and a rational basis in law : See *Rochester Tel. Corp. v. United States*, (1938) 307 US 125 : 83 Law Ed. 1147. See also *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* (1948) 1 KB 223.

As stated by Lord Hailsham of St. Marylebone L.C. (H.L.) in *Chief Constable of the North Wales Police v. Evans* (1982) 1 WLR 1155 at pp. 1160-61 :

“The function of the court is to see that lawful authority is not abused by unfair treatment and not to attempt itself to task entrusted to that authority by the law... The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according

fair treatment, reaches on a matter which it is authorised by law to decide for itself a conclusion which is correct in the eyes of the court.”

In the same case Lord Brightman says :

“Judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made.”

A repository of power acts ultra vires either when he acts in excess of his power in the narrow sense or when he abuses his power by acting in bad faith or for an inadmissible purpose or on irrelevant grounds or without regard to relevant considerations or with gross unreasonableness. See *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* (1948) 1 KB 223. In the words of Lord Macgathen in *Westminster Corporation v. London and North Western Railway* (1905) AC 426, 430 :

“... It is well settled that a public body invested with statutory powers such as those conferred upon the Corporation must take care not to exceed or abuse its powers. It must keep within the limits of the authority committed to it. It must act in good faith, and it must act reasonably. The last proposition is involved in the second, if not in the first....”

In *The Barium Chemicals Ltd. v. The Company Law Board* (1966) Supp. SCR 311 : (AIR 1967 SC 295), this Court states (at p. 323 of AIR) :

“... Even if (the statutory order) is passed in good faith and with the best of intention to further the purpose of the legislation which confers the powers, since the Authority has to act in accordance with and within the limits of that legislation, its order can also be challenged if it is beyond those limits or is passed on grounds extraneous to the legislation or if there are no grounds at all for passing it or if the grounds are such that no one can reasonably arrive at the opinion or satisfaction requisite under the legislation. In any one of these situations it can well be said that the authority did not honestly form its opinion or that in forming it, it did not apply its mind to the relevant facts.”

In *Renusagar* (1988) 4 SCC 59, 104 : (AIR 1988 SC 1737, 1763), Mukharji, J. as he then was, states :

“The exercise of power whether legislative or administrative will be set aside if there is manifest error in the exercise of such power or the exercise of the power is manifestly arbitrary. Similarly, if the power has been

exercised on a non-consideration or non-application of mind to relevant factors the exercise of power will be regarded as manifestly erroneous. If a power (whether legislative or administrative) is exercised on the basis of facts which do not exist and which are patently erroneous, such exercise of power will stand vitiated."

The true position therefore, is that any act of the repository of power, whether legislative or administrative or quasijudicial, is open to challenge if it is in conflict with the Constitution or the governing Act or the general principles of the law of the land or it is so arbitrary or unreasonable that no fair minded authority could ever have made it."

83. The Supreme Court has reiterated the principles in (1) *Delhi Transport Corporation Vs. DTC Mazdoor Congress and others*. AIR 1991 Supreme Court 101 (2). *R. Bommai & Others Vs. Union of India and others* (1994) 3 Supreme Court 1, (3) *Tata Cellular Vs Union of India* (1994) 6 Supreme Court Cases 651 and (4). *The Secretary, Ministry of Information and Broadcasting Govt. of India and others Vs Cricket Association of Bengal and others*, J.T. 1995 (2) S.C. 110=1995) 2 Supreme Court Cases 161. I, therefore, think it unnecessary to expatiate on this question I am of the view that a little like stacking the desk has been done by the Government against the respondent.

84. The respondent examined R.W.1. I do not find it necessary at all to deal with his evidence.

85. On issue No. 1 I find that no sufficient cause has been shown by the Government for issuing the declaration. On issue No. 2 I hold that the notification stands cancelled. On issue No. 3 "whether the grounds mentioned in the Notification and the Resume would not constitute sufficient cause to declare the Vishwa Hindu Parishad as an unlawful association would not arise for consideration then the grounds and the resume have not been proved by the Government.

86. Having regard to the facts and circumstances of this case as adumbrated by me, I am very clear in my mind, that the notification has been issued on extraneous considerations and on this ground also it is vitiated and I have no hesitation in cancelling the same. For all these reasons, by virtue of the provisions of Section 4 of the Act, I hereby cancel the notification.

Epilogue :

87. I have been cudgling my brains to find out whether all this exercise by the Government was

necessary but in the ultimate analysis I resigned myself to the position that man in power is apt to act in his bid to save himself. But I am sure the citizens of this country deserve a better deal from the powers that be. I fervently hope that all the citizens of this country would strive hard to make it prominent and powerful in the comity of nations. I would like to remind ourselves the famous words of Sri Aurobindo to the then younger generation of India, which is more relevant today.

"I would like to see some of you becoming great, great not for your own sake but to make India great. Work that she might prosper. Suffer that she might rejoice so that she might stand erect amongst the free Nations of the world."

I am sure that all our people are aware of the feelings expressed by Rabindra Nath Tagore: -

"Where the mind is without fear and the head is held high,

where knowledge is free,

where the world has not been broken up,  
India fragments have narrow domestic walls,  
where words given out from the depth of truth,

where tyreless striving stretches its arms to a perfection,

where the clear stream of reason has not lost its way into the deary desert sand at dead habits,

where the mind is left forward by a safe widening thought and action into that Heaven of Freedom,

my Father let my country awake".

From time immemorial,

we have been having a free way of life prompted by truth and activated by love. We are all aware, all religions teach only one thing, to love all and that has to be followed by all of us and if that is done, there is no room for any kind of friction or misunderstanding among the people. That is why Shri Sathya Sai Baba would advise us -



“Start the day with love,

Fill the day with love,

End the day with love.

This is the quickest path to peace and tranquility.

88. In fine, I am confident that we shall march forward and march forward together without any difference of caste, creed or religion.

We shall all pray everyday.

LOKA SAMASTHA SUKING BHAVANTII

June 28, 1995

‘g’

Sd/-

K. RAMAMOORTHY, Chairman.  
Unlawful Activities (Prevention)  
Tribunal

[F. No. 12034/18/95-IS(DV)(T)]

RAM PHAL Dy. Secy.